

Ministerio de Justicia



CODE OF COMMERCE

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"El presente texto es una traducción de un original en castellano que no tiene carácter oficial en el sentido previsto por el apartado 1º) artículo 6 Real Decreto 2555/1977, de 27 de agosto, por el que se aprueba el Reglamento de la Oficina de Interpretación de Lenguas del Ministerio de Asuntos Exteriores y de Cooperación"

II. CODE OF COMMERCE

2. ROYAL DECREE, DATED 22ND AUGUST 1885

BY WHICH THE CODE OF COMMERCE IS PUBLISHED

(Gazette numbers 298 to 328, from 16th October to 24th November 1885)

Pursuant to the provisions contained in the Act to which I gave My Royal Assent on this day, authorising My Government to publish the Bill of the Code of Commerce to have the force of an Act of Parliament, and accepting the advice of the Council of Ministers, I do hereby decree as follows:

Article 1. The said Code of Commerce shall be observed as if it were an Act of Parliament in Mainland Spain and the adjoining isles as of 1st January 1886.¹

Article 2. A copy of the official edition, signed by Myself and countersigned by the Minister of Grace and Justice shall be kept at the Archive of the Ministry and shall act as the original to all legal effects.²

Article 3. Public limited companies trading for profit in existence on 31st December 1885 that, pursuant to Article 150 of the same Code, are entitled to choose between continuing to be governed by their Regulations or Articles of Association, or to submit to the specifications of the new Code. They must exercise this right by means of a resolution passed by their shareholders at an Extraordinary General Meeting of Shareholders, called specifically for this purpose, according to their present Articles of Association, and that resolution must be published in the Madrid Gazette before 1st January 1886, and an authenticated copy be lodged at the Business Registry. Companies that do not avail themselves of the said right of option within the terms stated shall continue to be governed by their own Articles of Association and Regulations.

Article 4. Following a hearing of the plenary meeting of the Council of State, before the day on which the new Code begins to take force, the Government shall enact the appropriate Regulations for the organisation and regime of the Business Registry and Stock Exchanges, and the transitory provisions these new organisations require.

Issued at San Ildefonso, this 22nd August 1885. ALFONSO. The Minister of Grace and Justice, Francisco Silvela.

¹Article 1. See Articles 116 and following of the Code of Commerce and 3 and following of the Public Limited Companies Act and Private Limited Companies Act

²Article 2. See Articles 1 and 4, number 3 of the Spanish Civil Code.

The Spanish Constitution of 1978 has recognised diverse legislative competences to the Autonomous Communities. See Articles 148 to 150 of the text of the Constitution and its subsequent implementation in the Statutes of the Autonomous Community of Catalonia (Articles 9 to 11 of Organic Act 4/1979, Official State Gazette number 306, dated 22nd December 1979); Basque Country (Articles 10 to 12, both inclusive, of Organic Act 3/1979, dated 18th December, Official State Gazette number 306 dated 22nd December 1979); Galicia (Articles 27 to 34 of Organic Act 1/1981, dated 8th April, Official State Gazette number 101, dated 28th April 1981).

N.2.: See Article 59 of the Code of Commerce that specifically refers to this Article 2.

CODE OF COMMERCE

BOOK I

On businesspersons and commerce in general

TITLE ONE

On businesspersons and acts of commerce

Article 1. Those who are considered businesspersons for the purposes of this Code include:

- 1.º Those who, having the legal capacity to engage in business, do so habitually;
- 2.º Business or industrial companies incorporated pursuant to this Code;³

Article 2. Acts of commerce, whether performed by businesspersons or not, and whether or not they are specified in this Code, shall be governed by the provisions thereof; failing that by the business practice generally observed in each city and, if not covered by either of the rules, by those of ordinary Civil Law.

The acts included in this Code and any others of a similar nature shall be considered acts of commerce.⁴

Article 3. There shall be the legal presumption of habitual exercise of commerce from when the person intending to engage in business announces this by means of circulars, in the newspapers, on posters, signs displayed to the public, or by any other means, for an establishment that has any business transaction as the object thereof.

Article 4. Those who are of legal age and have free disposal of their assets shall have the legal capacity for habitual practice of commerce.⁵

Article 5. Minors under the age of eighteen years and the incapacitated may continue the commerce previously conducted by their parents or predecessors by means of their guardians. Should the guardians lack legal capacity to engage in business, or be subject to any incompatibility, they shall be obliged to appoint one or more agents who fulfil the legal requisites, to stand in for them in the practice of business.⁶

Article 6. In the case of engagement in business by a married person, the assets pertaining only to the spouse engaging in business shall be held subject to liability, and those acquired with the proceeds, being entitled to disposing

³ Article 1. Bear in mind Act 20/2007, dated 11th July, on the Freelance Workers' Statute (Official State Gazette number 166 dated 12th July).

⁴ Article 2. Organic Act 8/2003, dated 9th July, on Bankruptcy Reform, that amends Organic Act 6/1985, dated 1st July, on the Judiciary (Official State Gazette number 164, dated 10th July) has created the Mercantile Courts of Law. See, in that regard, its Article 2, that amends diverse principles of the Organic Act on the Judiciary; especially, new Article 86 ter. thereof that establishes the matters that may be heard by the Mercantile Courts of Law.

⁵ Article 4. Drafted pursuant to Act 14/1975, dated 2nd May (Official State Gazette number 107 dated 5th May), on reform of certain Articles of the Spanish Civil Code and Code of Commerce, on the legal status of the married woman and the rights and duties of the spouses. See Article 315 of the Spanish Civil Code, drafted by Royal Decree Law 33/1978, dated 16th November (Official State Gazette number 275, dated 17th November), that establishes that the age of legal majority is eighteen years. See Article 12 of the Constitution.

On the capacity of aliens, see Article 15 of the Code of Commerce. Also consider Organic Act 4/2000 dated 11th January, on rights and liberties of aliens in Spain and their social integration (Official State Gazette number 10, dated 12th January, correction of errors in Official State Gazette number 20, dated 24th January).

⁶ Article 5. See Article 269 of the Spanish Civil Code and note on preceding Article.

On registration of minors or the incapacitated at the Business Registry, see Articles 87.4 and 5, 88.2 and 91 of the new Business Registry Regulations dated 19th July 1996 (Official State Gazette number 184 dated 31st July).

of and of encumbering with a mortgage both. For the other common assets to be subject to liability, the consent of both spouses shall be required.⁷

Article 7. The consent referred to in the preceding Article shall be assumed to be granted when business is carried out with knowledge and without the specific opposition of the spouse who should provide it.⁸

Article 8. The consent referred to in Article 6 shall also be assumed to have been provided when, on contracting marriage, one of the spouses is conducting commerce and continues to do so without objection by the other.⁹

Article 9. Consent for the businessperson to bind the personal property of the spouse must be specifically provided in each case.¹⁰

Article 10. The spouse of the businessperson may freely revoke the specific or assumed consent to which the preceding Articles refers.¹¹

Article 11. The acts of consent, opposition and revocation to which Articles 7, 9 and 10 refer must be recorded, for third party purposes, in a public deed registered at the Business Registry. Those of revocation may not, under any circumstance, detract from rights previously acquired.¹²

Article 12. What is set forth in the preceding Articles is understood to be notwithstanding the terms to the contrary contained in the pre-nuptial agreements duly registered at the Business Registry.¹³

Article 13. The following persons may engage in business or hold any office or have any direct administrative or financial intervention in business or industrial companies:

1.º Repealed¹⁴

2.º Persons who have been barred pursuant to the Bankruptcy Act, while the period of barring set in the ruling classifying the bankruptcy has not elapsed;¹⁵

3.º Those who, by law or special provisions, may not engage in business.¹⁶

Article 14. Persons performing the offices hereinafter stated may not be engage in business acting in their own name or through another, nor may they hold offices or have direct administrative or financial intervention in business or industrial companies and within the limits of the districts, provinces or towns, to wit:

⁷ Article 6. Drafted pursuant to Act 14/1975, dated 2nd May (Official State Gazette number 107, dated 5th May). On general capacity of married women, see Articles 59, 61 to 65 and 316, 1,365 and 1,375 and following of the Spanish Civil Code, drafted pursuant to Act 11/1981, dated 3rd May (Official State Gazette number 119, dated 19th May). See Article 32 of the Constitution on legal equality of the spouses in marriage; 87,6, 88,3 and 92 of the Business Registry Regulations.

⁸ Article 7. See the note to Article 4.

⁹ Article 8. See note on Article 4.

¹⁰ Article 9. See note on Article 4.

¹¹ Article 10. See note on Article 4.

¹² Article 11. See note on Article 4.

¹³ Article 12. See note on Article 4.

¹⁴ Section 1 was repealed by Act 6/1984, dated 31st March.

¹⁵ Section 2 was amended by Final Provision 2.1 of Act 22/2003, dated 9th July, as drafted by the Sole Article 115 of Act 38/2011, dated 10th October.

¹⁶ Article 13. N.1. Section 1 is left without content as the penalty of civil interdiction has been suppressed by Article 2 of Act 6/1984, dated 31st March (Official State Gazette number 80 dated 3rd April).

N2. Amended by Act 22/2003, dated 9th July. On bankruptcy. See Articles 878 and 922 of the Code of Commerce.

N3. See Articles 136 to 138, 288; 613 and 615 of this Code: Articles 98.3 and 159.4 of the Constitution. See, on incompatibilities of personnel in the service of the Public Administrations, Act 53/1984, dated 26th December (Official State Gazette dated 24th January 1985) and Act 1/1995, dated 18th January (Official State Gazette on 24 January). Also see Act 12/1995, dated 11th May, on incompatibilities of the members of the Government of the Nation and High Offices of the General State Administration (Official State Gazette number 113, dated 12th May), just as amended by Act 14/2000, dated 29th December (Official State Gazette number 313, dated 30th December) on Tax, Administrative and Social Order Measures, that updates the list of formal obligations related to the documentation that must be produced by those affected by the Act, without detracting from the necessary control.

1.º Magistrates, judges and officers of the State Prosecution Service in active service;

This provision shall not be applicable to municipal mayors, judges and public prosecutors, nor to those who accidentally perform judicial or fiscal duties.

2.º Civil, economic or military governors of districts, provinces or enclaves;

3.º Employees of the collection and administrative offices of State funds appointed by the Government. An exception is made for those who administer and collect by entry, and their representatives;

4.º Exchange Agents and Stock Brokers, of whatever kind;

5.º Those who, due to the Laws or special provisions, cannot engage in business in a specific territory.¹⁷

Article 15. Aliens and companies incorporated abroad may engage in business in Spain, subject to the Laws of their country, with regard to their capacity to contract, and pursuant to the provisions of this Code, in all matters regarding creation of their establishments in Spanish territory, their business operations and the jurisdiction of the Courts of Law of the Nation.

What is specified in this Article shall be understood to be notwithstanding what may be established in specific cases by the Treaties and Conventions with other countries.¹⁸

TITLE II

On the Business Registry*

Article 16. 1. The purpose of the Business Registry is inscription of:

1.º Sole traders;

2.º Business companies;

3.º Lending and insurance companies, as well as reciprocal guarantee companies;

¹⁷ Article 14. N.1: On incompatibilities of personnel in the service of the Constitutional Tribunal, General Council of the Judiciary, members thereof, and personnel in the service of the Judicial Authorities; Court of Auditors and Council of State, see Organic Act 1/1985, dated 18th January (Official State Gazette dated 24th January), as well as Articles 389.8 and 474 of Organic Act 4/1985 on the Judiciary. Act 50/1981 dated 30th December (Official State Gazette on 13th January 1982), declares in its Article 57.7 that holding office as a State Public Prosecutor is incompatible with all business activities, either exercised directly or through an intermediary.

N.2. See Act 6/1987, dated 14th April, on organisation and operation of the General State Administration (Official State Gazette number 90 dated 15th April), implemented in relation to Sub-Delegates of Government in the provinces and Insular Directors of the General State Administration by Royal Decree 617/1997, dated 25th April (Official State Gazette number 106, dated 3rd May).

N.3. See Articles 29 and 40 of the Organic Statute of the Public Tax Collection Function and the Collection Staff of the Ministry of Finance, approved by Decree 3,286/1969 dated 19th December (Official State Gazette number 312 dated 30th December).

N.4. See Articles 96 and 104 of the Code of Commerce and notes to same.

N.5. See Article 124 of the Public Limited Companies Act. On incompatibilities of accounts auditors, see Article 8 of the Accounts Audit Act and 357 of the Business Registry Regulations.

With regard to incompatibilities of the personnel serving the National Stock Exchange Commission, see Article 14 of the Stock Market Act dated 28th July 1988.

Consider the integration between Notaries Public and Collegiate Stock Brokers in a Sole Body of Notaries Public, established in the 24th Additional Provision of Act 55/1999. With regard to the regime of seniority and disciplinary order, see Act 14/2000 dated 30th December (Official State Gazette number 313 dated 30th December).

¹⁸ Article 15. On the rights and liberties of aliens in Spain, see Organic Act 4/2000 dated 11th January, on rights and liberties of aliens in Spain and their social integration (Official State Gazette number 10, dated 12 January, correction of errors in Official State Gazette number 20, dated 24th January).

On branches established by foreign companies, see Articles 300 to 304 and 309 of the Business Registry Regulations. On matters of foreign investments, see Act 49/1979, on the legal regime of exchange control. (Official State Gazette number 298 dated 13th December), amended by Organic Act 10/1983 (Official State Gazette number 197, dated 18th August).

* Drafted pursuant to Article 1 of Act 19/1989 on partial reform and adaptation of the business legislation to the European Economic Community (EEC) Directives on Company matters (Official State Gazette number 178 on 27th July).

- 4.º Collective investment institutions and pension funds;
- 5.º Any individuals or corporations, when so provided by law;
- 6.º Economic interest groupings;
- 7.º Civil Professional Companies incorporated subject to the requirements established in the specific legislation for Professional Companies;
- 8.º The acts and contracts established by law.

2. It shall also be the remit of the Business Registry to legalise corporate books, the deposit and publicity of accounting documents and any other functions they are attributed by the Laws.¹⁹

Article 17.1. The Business Registry shall be run under the auspices of the Ministry of Justice by a personal sheet system.

2. The Business Registry shall have its seat in the capitals of provinces and in the towns where, due to needs of the service, it is established according to the legal provisions in force.

3. A Central Business Registry shall also be established in Madrid, merely for informative purposes, the structure and operation of which shall be determined by the regulations.

4. The office of Business Registrar shall be covered pursuant to the terms of Business Registry Regulations.²⁰

Article 18. 1. Inscription at the Business Registry shall be performed by virtue of a public deed. It may only be performed by virtue of a private document in the cases specifically foreseen in the Laws and the Business Registry Regulations.

2. Registrars shall classify the legality of the extrinsic forms of documents of all kinds under their responsibility, by virtue of which registration is applied for, as well as the capacity and interest of the grantors or signatories thereof and the validity of their content, by what arises from them and from the entries of the Registry.

3. Once the entries at the Business Registry are performed, their essential data shall be notified to the Central Registry, in the Journal of which they shall be published. That publication shall be recorded at the relevant Registry.

4. The maximum term to classify and register shall be fifteen days from the date of the presentation entry. The Registrar, in the title footnote, if the classification is positive, or in case of negative classification, shall inexcusably state the registration date and, as the case may be, the date of the negative classification for the purpose of counting the fifteen-day term. However, if the title has been withdrawn before the registration, has corrigible defects,

¹⁹ Article 16. Act 2/2007, dated 15th March, on professional companies (Official State Gazette number 65 dated 16th March), has amended numbers 7 and 8 of section 1.

See Articles 2, 81, 228 and following of the Business Registry Regulations dated 19th July 1996 (Official State Gazette number 184 dated 31st July). Number 6 of paragraph 1 of this Article 16 has been introduced by the 4th Additional Provision of Act 12/1991, on Economic Interest Groupings.

Consider Act 28/1998, dated 13th July, on Instalment Sales of Moveable Assets, that repealed Act 50/1965, dated 17th July, that was the basis of the Order dated 15th November 1982, that regulated the Register of Instalment Sales of Moveable Assets. Also see section 1 of the Sole Additional Provision of Royal Decree 1,828/1999 dated 3rd December, that approves the Regulations on Registration of General Contracting Conditions (Official State Gazette number 306 dated 23rd December), by virtue of which: "The Register of Moveable Assets is created, formed by the following sections: 1. Ships and Aircraft Section. 2. Car and other Motor Vehicles Section. 3. Industrial Machinery, business establishments and equipment goods Section. 4. Other Collateral Guarantees Section. 5. Other Moveable Assets Section that may be registered. 6. Section of the Register of General Contracting Conditions." Pursuant to Final Provision 2 of that Royal Decree, "The operation of the Register of Moveable Assets and, within it, the Register of General Conditions, shall commence on this Royal Decree coming into force."

See Order dated 19th July 1999, that approves the new Order for Registration of Instalment Sales of Moveable Assets (Official State Gazette number 172, dated 20th July). Finally, in the Instruction dated 26th April 2001 (Official State Gazette, number 113, dated 11th May), on data to be sent by the Ships Registers to the Central Register of Moveable Assets, the Directorate General of Registries and Notarial Offices (D.G.R.N.) recognizes that, although the Regulations have not yet been approved, it is not less true that the Registry of Moveable Assets has already begun to operate by virtue of the Sole Additional Provision of Royal Decree 1,828/1999, that it has declared applicable under supplementary terms to the Order dated 19th July 1999.

²⁰ Article 17. See 1, 3 and 13, 14, 16 and 379 and following of the Business Registry Regulations.

or if there is a title previously presented, the fifteen-day term shall be calculated from the date of return of the title, correction or dispatch of the prior title, respectively. In these cases, the term of the presentation entry shall be understood to be extended until conclusion of the classification and dispatch term.²¹

5. If the classification of the titles referred to in the preceding section is not performed within the term stated, the party concerned may demand that the Registrar before whom the title was presented perform this within the term of three days which may not be extended, or instigate the application of the substitution table provided in Article 275 bis of the Consolidated Text of the Mortgage Act, approved by the Decree dated 8th February 1946. Likewise, if the registrar does not register the title once the three-day term has elapsed, the party concerned may instigate the application of the substitution table.

6. The classification performed out of term by the incumbent Registrar shall give rise to a tariff reduction of 30 per cent, notwithstanding application of the relevant penalisation regime. For the purpose of the adequate compliance with the registration term, registrars must submit to the Directorate General of Registries and Notarial Offices, within the first twenty days of the months of April, July, October and January, a statistical record on electronic format containing the number of titles presented and the registration date thereof, as well as the percentage of titles recorded outside the term provided in this Article. The Directorate General of Registries and Notarial Offices shall specify by means of an Instruction the electronic format to be used and the data to be sent by the registrars.

7. If the Registrar were to issue a total or partial negative classification, within or without the term stated in Section Four of this Article, the party concerned may appeal to the Directorate General of Registries and Notarial Offices, or instigate application of the substitution table approved by the Directorate General of Registries and Notarial Offices, who shall undertake that classification under his responsibility.

8. If a Business Registry is entrusted to two or more registrars, to the extent possible, uniformity shall be sought in the classification criteria. For such purpose, they shall dispatch the documents pursuant to the distribution of matters or sectors arrangement to which they shall agree. The arrangement and the subsequent amendments thereof shall be submitted for approval to the Directorate General of Registries and Notarial Offices.

Whenever the registrar who is meant to classify a document becomes aware of defects preventing the requested operation from being done, he shall notify the co-holder or co-holders of the same sector or of the sole sector. Before the maximum term established for the registration of the document has elapsed he shall forward the documentation to them, and the registrar who understands that the operation is appropriate shall carry out the registration under his responsibility before the expiry of said term.

In the case of negative classification, the corresponding registrar shall indicate that it has been issued with the concurrence of the co-holders. If the said indication is missing, the classification shall be deemed to be incomplete, subject to the possibility that those entitled to do so may appeal against such classification, instigate the intervention of the substitute, or expressly request that it be completed. An incomplete classification shall not be taken into account in order to interrupt the term during which the classification must take place. Co-holders shall also be responsible for all purposes of any classifications which they approve.

A registrar classifying a document shall follow up on all of the incidents taking place until the completion of the registration procedure.²²

Article 19. 1. Registration at the Business Registry shall be discretionary for sole traders, with the exception of ship owners.

Sole traders who are not registered may not apply for inscription of any document at the Business Registry or take advantage of its legal effects

2. In the other cases considered under section one of Article 16, registration shall be mandatory. Except for provision to the contrary contained in Laws or enacting regulations, registration must be applied for within the month following granting the necessary documents to perform the entries.

²¹ Section 4 was amended by Article 106.1 of Act 62/2003, dated 30th December.

²² Sections 4 to 8 were amended by Article 26.2 of Act 24/2005, dated 18th November.
Sections 4 to 8 were added by Article 104 of Act 24/2001, dated 27th December.

3. Unregistered ship owners shall be held liable with all their assets for the obligations contracted.²³

Article 20. 1. The content of the Registry is assumed to be exact and valid. The entries of the Registry are under the safekeeping of the Courts and shall take their effects while no registration of judicial declaration of their inexactness or nullity is registered.

2. Registration does not endorse acts or contracts that are null pursuant to the Laws. The statement of inexactness or nullity shall not affect the rights of third parties in good faith, legally acquired.²⁴

Article 21. 1. Acts subject to registration may only be opposed with regard to third parties in good faith from their publication in the Official Journal of the Business Registry. This shall be notwithstanding the actual effects of the registration.

2. In the case of operations performed within the 15 days following publication, acts registered and published may not be opposed with regard to third parties who prove they were not able to know of them.

3. In the event of the content of the publication and the content of the registration not matching, third parties in good faith may invoke the publication if it is favourable to them.

Those who have caused the discrepancy shall be obliged to compensate the party damaged.

4. Good faith by the third party is assumed while his knowledge of the act subject to registration and not published or the discrepancy between the publication and registration is not proven.²⁵

Article 22. 1. The sheet open for each sole trader shall be used to record the data identifying him, as well as his business name and, when appropriate, the sign of his establishment, its seat and that of its branches, if any, the corporate object, date of commencement of the operations, the general powers granted, the consent, opposition and revocation referred to in Articles 6 to 10; pre-nuptial agreements, as well as final decrees in matters of nullity, separation and divorce; and the other particulars established by the Laws or the Regulations.

2. The sheet open for business companies and other firms to which Article 16 refers shall registered the deed of incorporation and amendments, termination, dissolution, reactivation, transformation, merger or split of the entity, creation of branches, appointment and severance of directors, liquidators and auditors, the general powers of attorney, issue of debentures or other negotiable stock grouped in issues, when the firm registered may issue them pursuant to the law, and any other circumstances determined by the Laws or the Regulations.

3. Branches shall also have their own sheet opened at the Registry in the province where they are established, in the manner and with the content and to the ends determined in the regulations.²⁶

Article 23. 1. The Business Registry is public. This publicity shall be made effective by certification of the content of the entries issued by the Registrars, or by simple informative note or copy of the entries and the documents deposited at the Registry. The certification shall be the only means to provide authentic accreditation of the content of the entries at the Registry.

2. Both certification as well as uncertified notes may be obtained by correspondence, without their fee exceeding the administrative cost.

3. The Central Registry shall not issue certifications of the data in its archive other than in relation to the objects and names of companies and other entities that may be registered.

²³ Article 19. See Article 26.3 of this Code and 4, 81 and 83 of the Business Registry Regulations.

²⁴ Article 20. See Articles 7 and 8 of the Business Registry Regulations.

²⁵ Article 21. See Article 9 of the Business Registry Regulations.

²⁶ Article 22. See Articles 87, 89, 90, 94 and 60 of the Business Registry Regulations.

Article 22.1 and 2. Consolidated under Act 2/1995, on Private Limited Companies (Official State Gazette number 71, dated 24th March).

4. Telematic publicity of the content of the Business Registries and Registries of Moveable Assets shall be performed according to the principles set forth in Articles 221, 222, 227 and 248 of the consolidated text of the Mortgage Act, approved by the Decree of 8th February 1946, in relation to Property Registries.²⁷

Article 24. 1. Sole traders, companies and entities subject to mandatory registration shall state, on all their documentation, correspondence, order notes and invoices, the domicile and identifying data of their inscription at the Business Registry.

Business companies and other entities must also record their legal form and, if appropriate, their present liquidation status. If the share capital is stated, mention must be made the capital underwritten and paid up.

2. Breach of these obligations shall be subject to penalty, following proceedings by the Ministry of Finance and Treasury, hearing the parties concerned, and pursuant to the Administrative Procedural Act, with a fine of amounts ranging from 50,000 to 500,000 pesetas.²⁸

TITLE III

On the accounts of businesses^{*29}

SECTION ONE. On business books

Article 25. 1. All businesses must keep orderly accounts, in keeping with the activity of their business activities that allows chronological monitoring of all their operations, as well as periodic preparation of balance sheets and inventories. Notwithstanding the terms set forth in the laws or special provisions, an inventories and annual accounts book and another daybook must necessarily be kept.

2. The accounting shall be kept directly by the businesspersons or other persons duly authorised, notwithstanding the former's liability. Authorisation shall be assumed to have been granted, except evidence to the contrary.

Article 26. 1. Business companies shall also keep a book of minutes, in which they shall record at least all the resolutions passed by the General Meetings and special meetings and those of the other collegiate bodies of the company, stating the date on the calling and constitution of the body, a summary of the matters debated, the interventions for which a record is requested, the resolutions passed and the results of the votes.

2. Any partner and the persons who, if appropriate, have attended the General Meeting on behalf of partners who are not attending, may obtain certification of the resolutions and minutes of the General Meetings at any time.

²⁷ Article 23. See Articles 12 and 77 to 80 of the Business Registry Regulations and Instruction dated 17th February 1998, by the Directorate General of Registries and Notarial Offices, on the general principles of formal publicity in the event of mass petition (Official State Gazette number 50, dated 27th February). Likewise, see Instruction dated 27th January 1999, by the Directorate General of Registries and Notarial Offices, on section 5, number 1 of the Instruction dated 17th February 1998 (Official State Gazette number 36, dated 11th February).

Section 4 has been added by Article 97 of Act 24/2001 dated 27th December, on Tax, Administrative and Social Order Measures. Also, see Instruction dated 3rd December 1999 by the D.G.R.N., on legalization of books at the Business Registries through telematic procedures (Official State Gazette number 7, dated 8th January 2000).

²⁸ Article 24. Infringements due to breach of the obligations established in this Article shall expire after six months, pursuant to the Additional Provision of Act 19/1989 dated 25th July, on adaptation of companies to the EEC (Official State Gazette number 178, dated 27 July). See Final Provision 1.3 of the Public Limited Companies Act.

²⁹ 26* Drafted according to Article 2 of Act 19/1989 dated 25th July, on partial reform and adaptation of the business legislation to the European Economy Community (EEC) Directives on Company matters (Official State Gazette number 178, dated 27th July).

Consider Royal Decree 1,514/2007 dated 27th November, that approves the General Accounting Plan (Official State Gazette number 278, dated 20th November) and Royal Decree 1,515/2007 dated 16th November, that approves the General Accounting Plan for Small and Medium Sized Companies and the specific accounting criteria for micro-companies (Official State Gazette number 279, dated 21st November; corrections of errors in Official State Gazette dated 29th November, 29th and 31st December).

3. The directors must present a notarial testimonial of the resolutions that require registration, at the Business Registry, within eight days following approval of the minutes.³⁰

Article 27. 1. Businesspersons shall present the books they are obliged to keep at the Business Registry of the place where they have their registered office, so that prior to their use, the relevant certification required for the book may be placed on the first page, and the stamp of the Registry on each sheet. In the event of change of registered office, the legalisation by the Registry of origin shall be fully valid.

2. However, performance of entries and annotations by any appropriate certification on the loose sheets that must later be bound to form the mandatory books shall be considered valid, these being legalised before four months have elapsed from the business year end date. With regard to the minutes' book, the terms set forth in the Business Registry Regulations shall apply.

3. The terms set forth in the preceding paragraphs shall apply to the register book of nominative shares of public limited companies and share partnerships and the register book of shareholders of Private Limited Companies, which may be kept by computer means, according to the terms of the regulations.

4. Each Business Registry shall keep a legalisations book.³¹

Article 28. 1. The Book of Inventories and Annual Accounts shall open with the detailed initial balance of the business. At least quarterly, these shall be transcribed with the moneys and balances for checking. The year -end inventory and the annual accounts shall also be transcribed.

2. The Day Book shall record the daily account of all the operations related to the activity of the business. However, the joint annotation of the total operations shall be valid for periods not exceeding one month, on condition that their detail be recorded on other concordant books or registers, according to the nature of the activity concerned.³²

Article 29. 1. All the accounting books and documents must be kept, whatever the procedure used, with clarity, by order of dates, without blank spaces, interpolations, crossings out or erasures. As soon as errors or omissions suffered in the accounting annotations are noticed, they shall be noted. No abbreviations or symbols whose meaning is not clear according to the Law, the Regulations or generally applicable business practice may be used.

2. The accounting annotations must be made stating the values in pesetas.³³

Article 30. 1. Traders shall keep the books, correspondence, documentation and receipts related to their business, duly ordered, for six years, as of the last entry made in the books, notwithstanding what is established in the general or special provisions.

2. Should the trader cease in his activities, this shall not exonerate him of the duty referred to in the preceding paragraph, and if deceased, this shall befall his heirs. In the event of dissolution of companies, the liquidators shall be bound to fulfil the terms of that paragraph.³⁴

Article 31. The value as evidence of the traders' books and other accounting documents shall be appreciated by the Courts according to the general rules of law.

³⁰ Article 26. See, on minutes of Meeting and notarial certificate, Articles 113 and 114 of the Public Limited Companies Act. On content of minutes, see Article 97 of the Business Registry Regulations. With regard to the term to request registration, see Article 83 of the Business Registry Regulations.

³¹ Article 27. On legalisation of traders' books, see Articles 329 to 337 of the Business Registry Regulations.

³² Article 28. See Articles 172 and 193 of the Public Limited Companies Act.

³³ Article 29.2. See Act 46/1998 dated 17th December, on Introduction of the Euro (Official State Gazette number 302, dated 18th December), just as amended by Article 67 of Act 14/2000, dated 29th December (Official State Gazette number 313, dated 30th December), on Tax, Administrative and Social Order Measures. Especially Article 27; Royal Decree 2,814/1998 dated 23rd December, which approves the regulations on accounting aspects of introduction of the euro (Official State Gazette number 307, dated 24th December).

³⁴ Article 30. Consider Royal Decree 1,496/2003 dated 28th November, that approves the Regulations that regulate invoicing obligations, and amend the Regulations on Value Added Tax, as well as Order EHA/962/2007 dated 10 April, that establishes certain provisions on telematic invoicing and electronic conservation of invoices, set forth in Royal Decree 1,496/2003 dated 28th November, that approves the Regulations that regulate invoicing obligations (Official State Gazette number 90, dated 14th April).

Article 32. 1. The accounts of traders are secret, notwithstanding what is set forth in the provisions of the laws.

2. Notification or general inspection of the books, correspondence and other documents of traders may only be decreed, *ex officio*, or at the instance of a party, in cases of universal succession, temporary receivership, bankruptcies, liquidations of companies or business entities, redundancy proceedings, and when the partners or legal representatives of the workers are entitled to examine these directly.

3. In any event, outside the cases set in the preceding paragraph, production of the books and documents of traders at the instance of the party or *ex officio* may be decreed, when the person to whom they belong has an interest or liability in the matter in which production is appropriate. The inspection shall be limited exclusively to the points that are related to the matter concerned.

Article 33. 1. The recognition to which the preceding Article refers, whether general or particular, shall be performed on the trader's premises, in his presence or that of the person he may appoint, and the appropriate measures must be taken for due conservation and custody of the books and documents.

2. In any case, the person at whose request the inspection is decreed may avail himself of auxiliary experts, in the manner and number the Judge may consider necessary.

SECTION 2.^a On the annual accounts^{*35}

Article 34. 1. At the year– end, the trader must draw up the annual accounts of his business that shall include the balance sheet, the profit and loss accounts, and a statement of the changes in the net assets during the business year, a cash flow statement and the annual report. These documents shall form a unit. The cash flow statement shall not be obligatory when this is so established by a legal provision.

2. The annual accounts must be drafted clearly and provide a true image of the assets, financial situation and results of the company, pursuant to the legal provisions. To that end, accounting for the operations shall attend to their financial reality and not just to their legal format.

3. When application of the legal provisions is not sufficient to provide a true image, the necessary complementary information shall be provided in the annual report to achieve that result.

4. In exceptional cases, if application of a legal provision on matters of accounting were to be incompatible with the true image the annual accounts must provide, that provision shall not be applicable. In these cases, the annual report must state that it is not applied, provide sufficient motives and explain its influence on the assets, financial situation and results of the company.

5. The annual accounts must be drawn up stating the values in Euros.³⁶

6. The terms set forth in this section shall also be applicable in cases in which any individual or corporation formulates and publishes annual accounts.

Article 35. 1. The balance sheet shall provide a separate record of the assets, liabilities and net assets.³⁷

The assets shall include, with the due separation, the fixed or non–current assets and the operating or current assets. The affectation of the patrimonial elements of the assets shall be performed according to their assignment. The operating or current assets shall include the elements of the assets that are expected to be sold, consumed or realised in the course of the normal operating cycle, as well as, in general terms, those items whose maturity is

³⁵ * This Section 2, with its Articles 34 to 41, has been consolidated by Act 16/2007 dated 4th July, on reform and adaptation of the business legislation on accounting matters for international harmonization based on the European Union provisions (Official State Gazette number 160 dated 5th July).

³⁶ Article 34.5. See Act 46/1998, on introduction of the Euro (Official State Gazette number 302 dated 18th December), just as amended by Article 67 of Act 14/200 (Official State Gazette number 313 dated 30th December), on Tax, Administrative and Social Order Measures, especially Article 27; Royal Decree 2,814/1998 dated 23rd December, that approves the regulations on accounting aspects of introduction of the euro (Official State Gazette number 307 dated 24th December).

³⁷ Article 35. See Articles 175 and following, 189 and following, 200 and following of the Public Limited Companies Act.

expected to take place within a maximum term of one year from the date of the business year end. The other elements of the assets must be classified as fixed or non-current.

Under liabilities, there shall be due separation of non-current liabilities and operating or current liabilities. The operating or current liabilities, in general terms, shall include obligations whose maturity or extinction is expected to take place during the normal operating cycle, or that does not exceed the maximum term of one year as of the business year-end date. The other elements of the liabilities must be classified as non-current. A separate record shall be kept of the provisions or obligations over which there is uncertainty with regard to their quantity or maturity.

Under net assets, there shall be distinction of at least the shareholders' funds from the remaining items that form it.

2. The profit and loss account shall record the result of the business year, duly separating the revenue and expenses that may be assigned to it, and distinguishing the operating results from those that are not. Separate reporting shall record, at least, the turnover, the personnel expenses, the provisions for depreciation, the valuation corrections, the variations in value arising from application of the reasonable value criteria, the revenue and financial expenses, the losses and gains arising from disposal of fixed assets and expense of tax on profit.

The turnover shall include the moneys from sale of the products and providing services, or other revenue from the ordinary activities of the business, deducting discounts and other reductions on the sales, as well as the Value Added Tax and other taxes directly related to the said turnover, that must be passed on.

3. The statement showing changes in the net assets shall have two parts. The first shall exclusively show the revenue and expenses generated by the business the business year, distinguishing between those reported in the profit and loss accounts and those recorded directly under net assets. The second shall contain all the movements in the net assets, including those due to transactions performed with the partners or owners of the business, when acting as such. It shall also report the adjustments in the net assets due to changes in accounting criteria and correction of errors.

4. The cash flow statement shall show the collections and payments made by the company, duly organised and grouped in categories or types of activities, in order to report on the cash flow during the business year.

5. The annual report shall complete, extend and comment on the information the other documents forming the annual accounts contain.

6. Each one of the items of the annual accounts must record, in addition to the figures for the business year ended, those of the business year immediately preceding.

When this is significant to provide the true image of the business, the sections of the annual report shall also provide qualitative data on the status the previous business year.

7. The structure and content of the documents forming the annual accounts shall comply with the models approved in the enacting regulations.

8. The structure of these documents may not be amended from one business year to another, apart from exceptional cases, provided this is duly justified and recorded in the annual report.

Article 36. 1. The elements of the balance sheet include:

- a) Assets: property, rights and other resources under the economic control of the business, resulting from past events, from which it is probable that the business shall obtain financial benefit in the future.
- b) Liabilities: present obligations arising due to past events, the extinction of which shall probably give rise to a decrease in resources that may produce economic profit. To these ends, they are understood to include provisions.
- c) Net assets: this consists of the residual part of the company assets, once all the liabilities are deducted. This includes the contributions made, either at the moment of its incorporation, or in other subsequent ones, by the partners or owners thereof, which shall not be considered liabilities, as well as the accumulated results or other variations that affect this.

For the purposes of distribution of profit, for mandatory reduction of the share capital and mandatory dissolution due to losses according to the provisions of the legal regulation on public limited companies and private limited companies, the net assets shall be considered the amount classified as such according to the criteria to prepare the annual accounts, increased by the amount of the share capital underwritten but not called, as well as the amount of the face value and issue premiums, or share capital undertakings underwritten, which is registered on the books as a liability.

2. The elements of the profit and loss accounts and the statement showing the changes in net assets in the business year include:

- a) Revenue: Increases in the net assets during the business year, whether due to inclusions or increases in the value of the assets, or decrease of liabilities, provided they have their origin in contributions by the partners or owners.
- b) Expenses: decreases in the net assets during the business year, whether in the form of removals or decreases in the value of the assets, or increase in the liabilities, provided these do not have their origin in distributions to the partners or owners.

The revenue and expenses in the business year shall be assigned to the profit and loss account and shall form part of the result, except when it is appropriate to apply them directly to the net assets, according to the terms foreseen in this section, or in an enacting regulation thereof.

Article 37. 1. The annual accounts must be signed by the following persons, who shall certify their veracity:

- 1.º By the business owner himself, if an individual;
- 2.º By all the partners who are unlimitedly liable for the corporate debts;
- 3.º By all the company directors.

2. In the cases referred to in numbers 2 and 3 of the preceding section, if the signature of any of the persons stated therein were to be missing, this shall be stated on the documents on which it is missing, specifically mentioning the reason.

3. The signatures shall be preceded by the date on which the accounts were drawn up.

Article 38. The registration and valuation of the elements forming the different items forming the annual accounts must be performed according to the generally accepted principles of accounting. In particular, the following rules shall be observed:

- a) Except for evidence to the contrary, it shall be assumed that the business is a going concern;
- b) The valuation criteria shall not change from one business year to another;
- c) The principle of valuation caution shall be applied. This principle requires accounting only for the profit obtained up to the business year- end date. However, all the risks arising in the business year or any previous one must be taken into account, even if only known between the date of closing the balance sheet and that of the accounts being drawn up, in which case complementary information shall be provided in the annual report, notwithstanding the record that might arise in other documents forming the annual accounts. Exceptionally, if those risks were known between the formulation and before approval of the annual accounts, and these have a highly significant effect on the true image, the annual accounts must be drawn up again. In any case, the depreciation and value corrections due to deterioration of the value of the assets must be taken into account, regardless of if the business year ends with profit or with a loss;

Likewise, caution must be applied in the estimates and valuations to be performed under uncertain conditions.

- d) The expenses and revenue shall be applied to the business year in which they occur, regardless of the date of their payment or collection;

- e) Apart from the exceptions foreseen in the enacting regulations, the items of the assets and liabilities, or those of expenses and revenue, may not be compensated, and they shall be valued separately from the elements forming the annual accounts;
- f) Notwithstanding the terms set forth in the following Articles, the assets shall be accounted for by acquisition price, or by production cost, and the liabilities by the value of the consideration received in exchange for debt, plus the interest accrued pending payment; the provisions shall be accounted for by the present value of the best estimate of the amount necessary to deal with the obligation, on the date of closing the balance sheet;
- g) Operations shall be accounted for when, fulfilling the circumstances described in Article 36 of this Code for each one of the elements included in the annual accounts, their valuation may be performed with an adequate degree of reliability;
- h) The elements forming the annual accounts shall be valued in the currency of their economic environment, notwithstanding their presentation in Euros;
- i) Non-strict application of some accounting principles shall be allowed when the importance with regard to the variation that event causes is scarcely significant and, thus, does not alter the statement of the true image of the assets, the financial situation of the and results of the business.

Article 38.bis. 1. The following elements of the assets shall be valued at their reasonable value:

- a) The financial assets forming part of a trading portfolio are classified as available for sale, or are derivative financial securities;
- b) The financial assets forming part of a trading portfolio, or derivative financial securities.

2. In general terms, the reasonable value shall be calculated based on a reliable market value. In elements for which a reliable market value may not be determined, this shall be obtained by application of the valuation models and techniques according to the requisites the regulations determine.

The elements that may not be reliably valued according to the terms established in the preceding paragraph shall be valued according to the terms set forth in section f) of Article 38.

3. At the year-end, and notwithstanding the terms of Article 38, section c), the variations in value arising from application of the reasonable value criteria shall be applied to the profit and loss accounts. However, that variation shall be included directly in the net assets, in a heading to adjust the reasonable value, when:

- a) It is a financial asset available for sale;
- b) The element involved is a coverage instrument according to a coverage accounting system that allows all or part of those variations in value not to be recorded in the profit and loss accounts, under the terms determined in the enacting regulations.

4. The accumulated variations in reasonable value, except those assigned to the result of the business year, must be recorded under the reasonable value adjustment heading, up to the moment when removal, deterioration, disposal or cancellation of those elements takes place, in which case the accumulated difference shall be assigned to the profit and loss accounts.

5. Financial instruments not mentioned in section 1 may be valued at their reasonable value under the terms determined in the enacting regulations, within the limits established in the international financial reporting standards adopted by the European Union Regulations;

The regulations may also establish the obligation to value other elements of the assets other than financial instruments at their reasonable value, provided those elements are valued with a sole nature according to that criterion under the said European Union Regulations.

In both cases, it must be indicated whether the variation in value caused in the asset element due to application of this criterion is applied to the profit and loss accounts, or is included directly in the net assets.

Article 39. 1. Fixed or non-current assets whose useful life has a time limit, must be depreciated rationally and systematically over the time of their use. Notwithstanding this, even when their useful life is not time limited, when there is deterioration of these assets, the necessary valuation corrections shall be performed to attribute them a lower value than that they are due on the date of the balance sheet being closed.

2. When there is a deterioration in the value of the operating or current assets, the necessary valuation corrections shall be performed in order to assign these a the lower market value, or any other appropriate lower value they may have, by virtue of special circumstances, on the date of closing the balance sheet.

3. Valuation by the lower value, in application of the terms provided in the previous sections, may not be maintained if the reasons giving rise to the corrections in value have ceased to exist, except when they may be classified as irreversible losses.

4. Goodwill may only be recorded on the assets of the balance sheet when acquired not free of charge.

Its amount shall not be subject to depreciation, but the appropriate value corrections must be performed, at least annually, in the event of deterioration. Losses due to deterioration of the goodwill shall be irreversible.

The report on the annual accounts must report the adjustments made in the goodwill since the acquisition thereof.

Article 40. 1. Notwithstanding the terms established in other Laws that require annual accounts to be audited by a person with the legal status of an accounts auditor, and what is set forth in Articles 32 and 33 of this Code, all traders shall be obliged to submit the annual accounts of their company to audit when this is resolved by the competent Court of Law, even under voluntary jurisdiction, if due to a properly grounded petition by a party accrediting a legitimate interest.

2. In this case, the Court of Law shall require the applicant to post a sufficient guarantee to cover payment of the procedural costs and audit fees, which shall be borne by him if no flaws or essential irregularities are found in the annual accounts reviewed, to which end the auditor shall present the Court a copy of the report prepared.³⁸

Article 41. 1. For the formulation, submission to auditing, deposit and publication of the annual accounts, public limited companies, Private Limited companies and share partnerships shall be governed by their respective regulations.

2. General and simple share partnerships when all the general partners are Spanish or foreign companies on the date of the business year- end shall be subject to the terms set forth in Chapter VII of the Public Limited Companies Act, with the exception of what is set forth in Section 9 thereof.

SECTION 3^a. Presentation of the accounts of corporate groups^{*39}

Article 42. 1. All controlling companies of a corporate group shall be obliged to draw up consolidated annual accounts and management reports in the manner foreseen in this section.

A group exists when a company holds, or may hold, directly or indirectly, the control over one or several others. In particular, there shall be presumed to be control when a company, which shall be classified as controlling, is in a relation with another company, which shall be classified as dependent, in which any of the following situations arise:

³⁸ Article 40. Consider the Accounts Audit Act, dated 12th July 1988 and its Regulation dated 20th December 1990.

³⁹ * This Section 3, with its Articles 42 to 49, has received a new drafting in Act 16/2007, dated 4th July, on reform and adaptation of the business legislation on accounting matters, for its international harmonisation based on the European Union provisions (Official State Gazette number 160 dated 5th July).

- a) It holds the majority of the voting rights;
- b) It has the power to appoint or dismiss the majority of the members of the governing body;
- c) It may dispose, by virtue of agreements entered into with third parties, of the majority of the voting rights;
- d) It has used its votes to appoint the majority of the members of the governing body who hold office at the moment when the consolidated accounts must be drawn up and during the two business years immediately preceding. In particular, that circumstance shall be assumed when the majority of the members of the governing body of the governing body of the controlled company are members of the governing body or top management of the controlling company, or of another company controlled by it. In that event, consolidation shall not arise if the company whose directors have been appointed is bound to another in any of the cases foreseen in the first two letters of this section.

For the purposes of this section, the voting rights of the controlling company shall be added to those it holds through other dependent companies, or through persons acting in its own name, but on account of the controlling company, or other dependent ones, or those with which it has made arrangements through any other person.

2. The obligation to draw up the consolidated annual accounts and management report does not exonerate the companies forming the group preparation of their own annual accounts and the relevant management report, according to their specific regime.

3. The company obliged to draw up consolidated annual accounts must include the companies forming the group in them under the terms established in section 1 of this Article, as well as any other company controlled by these, whatever the legal form and regardless of the registered office thereof.

4. The General Meeting of Shareholders of the company obliged to draw up the consolidated annual accounts must appoint the accounts auditors who are to audit the annual accounts and the management report of the group. The auditors shall ensure the management report matches the consolidated annual accounts.

5. The consolidated accounts and management report of the group must be submitted for approval by the General Meeting of Shareholders of the company obliged to simultaneously consolidate the annual accounts of the company. The shareholders of the companies belonging to the group may obtain the documents submitted for approval by the Meeting from the company obliged to draw up the consolidated annual accounts, as well as the management report of the group and the auditors' report. The deposit of consolidated accounts, the management report of the group and the auditors' report at the Business Registry and its publication shall be performed according to the terms established for the annual accounts of the public limited companies.

6. What is set forth in the next section shall be applicable to cases in which any individual or corporation voluntarily formulates and publishes consolidated accounts. Likewise, these rules shall be applied, whenever possible, to cases of formulation and publication of consolidated accounts by any individual or corporation other than those considered in section 1 of this Article.

Article 43. Notwithstanding what is set forth in the preceding Article, the companies included therein shall not be obliged to perform consolidation if they fulfil any of the following situations:

1. When the closing date of the business year of the company bound to consolidate the set of the companies thereof does not exceed, in its last annual accounts, two of the limits set forth in the Public Limited Companies Act for formulation of the abbreviated profit and loss accounts, except if any of the companies in the group has issued securities admitted to trading on a regulated market in any member State of the European Union.

2. When the company bound to consolidate under Spanish Law is also dependent on another that is governed by that legislation, or by that of another member State of the European Union, if the latter company holds 50 per cent or more of the corporate shares thereof, and the shareholders or partners who hold at least 10 per cent have not requested formulation of consolidated accounts six months before the business year-end. In all cases, the following requisites must be fulfilled:

- a) For the company dispensed from formalising consolidation, as well as all the companies that it should include in the consolidation, to be consolidated in the accounts of a larger group whose controlling company is subject to the legislation of a member State of the European Union;
- b) For the company dispensed formalisation of the consolidation to include the mention in its accounts that it is exempt of the obligation to establish consolidated accounts, the group to which it belongs, the company name and the registered office of the controlling company;
- c) For the consolidated accounts of the controlling company, as well as the management report and auditors' report to be deposited at the Business Registry, translated into one of the official languages of the Autonomous Community where the company dispensed has its registered office;
- d) For the company dispensed formalisation of consolidation not to have issued securities admitted to trading on a regulated market in any member State of the European Union.⁴⁰

Article 43 bis. The consolidated annual accounts must be drawn up according to the following regulations:

- a) If, on the closing date of the business year, any of the companies in the group has issued stock admitted to listing on a regulated market in any member State of the European Union, the international financial reporting standards adopted by the Regulations of the European Union shall apply.

Notwithstanding this, Articles 42, 43 and 49 of this Code shall be applicable to them. Likewise, the consolidated annual accounts must include the information contained in indications 1 to 9 of Article 48 of this Code.

- b) If, at the closing date of the business year, none of the companies in the group has issued securities admitted to listing on a regulated market in any member State of the European Union, they may opt for application of the accounting regulations included in this Code and its enactment regulations, or by the international regulations on financial information reporting adopted by the Regulations of the European Union. If opting for the latter, the consolidated annual accounts must be prepared continuously according to those Regulations, and the terms of the last paragraph of letter a) of this Article shall also be applicable to them.

Article 44. 1. The consolidated annual accounts shall include the balance sheet, the profit and loss accounts, a statement recording the changes in the net assets during the business year and an annual report, all consolidated. These documents shall form a unit. The consolidated management report shall be attached to the consolidated annual accounts.

2. The consolidated annual accounts must be drawn up clearly and provide a clear image of the assets, of the financial situation and results of the set constituted by the companies included in the consolidation. When application of the provisions of this Code is not sufficient to provide a true image, in the sense indicated above, the annual report shall provide the necessary complementary information to achieve that result.

Under exceptional cases, if application of a provision contained in the following Articles is incompatible with the true image the consolidated accounts must provide, that provision shall not be applicable. In those cases, the annual report must state that lack of application, be sufficiently motivated and explain its influence on the assets, the financial situation and results of the group.

3. The consolidated annual accounts shall be established on the same date as the annual accounts of the company obliged to consolidate. If the business year–end date of a company within the consolidation differs by more than three months from the relevant one of the consolidated accounts, its inclusion in these shall be made by means of the intermediate accounts referred to on the date when the consolidated ones are established.

4. When the composition of the companies included in the consolidation has varied considerably over the course of a business year, the consolidated annual accounts must include the necessary information in the annual report so the comparison of the successive consolidated financial statements shows the main changes that have taken place between business years.

⁴⁰ Article 43. See Article 190 and Final Provision 1.4. of the Public Limited Companies Act and Article 48.2 of this Code.

5. The consolidated accounts must be formulated stating the figures in Euros.⁴¹

6. The consolidated accounts and management report shall be signed by all the directors of the company obliged to draw them up, who shall certify their veracity. If the signature of anyone of them is missing, this shall be stated on the documents on which it is missing, explaining the reason why.

Article 45. 1. The elements of the assets, liabilities, revenue and expenses included in the consolidation must be valued following uniform methods, according to the criteria included in this Code and its enactment regulations.

2. If any element of the assets, liabilities, revenue and expenses included in the consolidation has been valued by any company that forms part thereof according to methods that are not uniform with those applied in the consolidation, that element must be valued again according to that method, except if the result of the new valuation were to be of little significance for the purposes of obtaining a true image of the group.

3. The structure and content of the consolidated annual accounts shall comply with the models approved by the enacting regulations, in keeping with the provisions of Article 35 of this Code, for individual annual accounts.

4. The consolidated balance sheet shall record a specific heading for the net assets, under an appropriate name, for the stake held by external shareholders or minority interests of the group.

Article 46. The assets, liabilities, revenue and expenses of the companies in the group shall be included in the consolidated annual accounts applying the global integration method. In particular, this shall be performed by application of the following rules:

- 1.^a The accounting figures of the stakes in the capital of the dependent companies owned, directly or indirectly, by the controlling company shall be compensated, on the date of acquisition, by the proportional part that those securities represent in relation to the reasonable value of the assets acquired and liabilities undertaken, including, as appropriate, the provisions under the terms determined by the regulations;

The regulations shall govern the accounting treatment in the case of successive acquisitions of stakes.

- 2.^a The positive difference that exists after the compensation stated shall be registered on the consolidated balance sheet, under a special heading, with the appropriate name, that shall be stated in the annual report, as well as the amendments it has suffered with regard to the preceding business year, if important. That difference shall be dealt with according to the terms established for goodwill under Article 39.4 of this Code;

If the difference were negative, it must be recorded directly against the consolidated profit and loss accounts.

- 3.^a The elements of the assets and liabilities of companies in the group shall be included in the consolidated balance sheet, following application of the terms established in Article 45 of this Code, with the same valuations as recorded in the respective balance sheets of those companies, except when rule 1 is applicable, in which case they shall be included on the basis of the reasonable value of the assets acquired and liabilities undertaken, including, when appropriate, the provisions under the terms established in the enacting regulations, on the date of first consolidation, once the depreciation and deteriorations arising since that date have been considered;

- 4.^a The revenue and expenses of the companies in the group shall be included in the consolidated annual accounts, except in cases in which these must be eliminated as foreseen in the following rule;

- 5.^a Generally, the debits and credits because companies included in the consolidation must be eliminated, with the revenue and expenses related to transactions between those companies and the results generated as a consequence of those transactions, that are not performed with regard to third parties. Notwithstanding the

⁴¹ Article 44.5. See Act 46/1998, dated 17th July, on Introduction of the Euro (Official State Gazette number 302, dated 18th December), as amended by Article 67 of Act 14/2000, dated 29th December (Official State Gazette number 313 dated 30th December), on Tax, Administrative and Social Order Measures, especially Article 27, Royal Decree 2,814/1998, dated 23rd December, that approve the regulations on the accounting aspects of introduction of the euro (Official State Gazette number 307, dated 24th December).

eliminations stated, these must be subject, when appropriate, to the adjustments arising from transfers of results between companies included in the consolidation.

Article 47. 1. When a company included in the consolidation jointly manages another company with one or several companies outside the group, this may be included in the consolidated companies applying the proportional integration method, that is, in proportion to the percentage of its share capital held by the companies included in the consolidation.

2. In order to perform that proportional consolidation, the rules established in the preceding Article shall be taken into account, with the necessary adaptations.

3. When a company included in the consolidation exercises a significant influence on the management of another company that is not included in the consolidation, but with which it is associated due to holding a stake in it that, creating a lasting link with it, is aimed at contributing to the activity of the company, that stake must be recorded on the consolidated balance sheet as an independent item under an appropriate heading.

It shall be assumed, except when there is evidence to the contrary, that there is a stake in the sense stated, when one or several companies in the group hold at least 20 per cent of the voting rights in a company that does not belong to the group.

4. The consolidated accounts shall include all the companies included in section 3, as well as the companies in section 1 that are not consolidated using the proportional integration method, by applying the equivalence setting or stake method. The option established for the companies in section 1 shall be exercised uniformly with regard to the companies in that situation.

5. For the purposes provided in the preceding section, the following rules shall be taken into account:

a) When the equivalence setting procedure is applied for the first time, the book value of the stake in the consolidated accounts shall be the relevant amount of the percentage represented by that stake, at the moment of the investment, on the reasonable value of the assets acquired and liabilities undertaken, including, when appropriate, the provisions of the terms that are determined in the regulations. If the difference arising between the cost of the stake and the value to which the reference is made is positive, it shall be included in the investment amount on the books and be recorded in the annual report, the terms provided in Article 46 being applicable to it. If the difference is negative, it must be applied directly to the consolidated profit and loss accounts.

The rules laid down in the enacting regulations of the accounting treatment shall apply in the case of successive stakes.

b) The variations undergone in the current business year in the net assets of the company included in the consolidated annual accounts by the equivalence setting procedure, after elimination of the relevant proportion for the results generated in transactions between that company and the company that holds the stake, or any other of the companies in the group, that are not performed with regard to third parties, shall increase or decrease, as appropriate, the accounting value of that stake in the relevant proportion, once the depreciation and deteriorations arising from the date on which the method was applied for the first time are considered.

c) The profit distributed by the coordinate included in the annual accounts consolidated by the equivalence setting procedure shall reduce the accounting value of the stake in the consolidated balance sheet.

Article 48. In addition to the mentions established by other provisions of this Code and by the Public Limited Companies Act, the consolidated annual report must include at least the following indications:⁴²

1.^a The name and registered office of the companies included in the consolidation; the stake and percentage of voting rights held by the companies included in the consolidation, or by the persons acting in their own name, but on behalf of them in the capital of other companies included in the consolidation other than the controlling company, as well as in the case of Article 42 on which the consolidation has been based, identifying the link applicable to them to configure them within a group. These mentions must be given

⁴² Article 48. See Articles 34 and 35 of this Code and 200 of the Public Limited Companies Act.

with regard to the companies in the group that are left out of the consolidation, because they do not have a significant interest for the true image that must be provided in the consolidated annual accounts, stating the reasons for the exclusion.

- 2^a. The name and registered office of the companies to which the equivalence setting procedure applies, or method of participation by virtue of the terms set forth in section 3 of Article 47, stating the fraction of their capital and percentage of voting rights held by the companies included in the consolidation, or by a person acting in his own name, but on the account of these.

The same indications must be provided in relation to companies that have waived the terms set forth in Article 47, when the stakes in the capital of these companies have no significant interest with regard to the true image that must be stated by the consolidated accounts, and a reason must be given for which that method has not been applied.

- 3^a. The name and registered office of the companies to which the proportional integration method has been applied by virtue of the terms set forth in sections 1 and 2 of Article 47, the elements on which the joint management is based, and the fraction of their capital and percentage of voting rights they have in the companies included in the consolidation, or a person acting on his own behalf, but on account of these.

- 4^a. The name and registered office of other companies not included in the preceding sections, in which the companies included in the consolidation hold a direct stake, or one through a person acting in his own name, but on their behalf, with a percentage of not less than 5 per cent of their capital.

The stake in the capital and percentage of the voting rights shall be indicated, as well as the amount of the net assets and result of the last business year of the company, the accounts of which have been approved. That information may be omitted when they only have a negligible interest with regard to the true image the consolidated accounts must provide.

- 5^a. The average number of persons employed in the course of exercise by the companies included in the consolidation, distributed by categories, as well as, if not mentioned separately in the profit and loss accounts, the personnel expenses related to the business year.

A separate mention shall be made of the average number of persons employed in the course of the business year by the companies to which the terms set forth in sections 1 and 2 of Article 47 apply.

- 6^a. The sum of the wages, per diems and remunerations of any kind accrued during the business year by the top management staff and members of the governing body, both of the controlling company, whatever their reason, as well as the obligations contracted in matters of pensions, or payment of life insurance premiums for former and present members of the governing bodies and top management staff. That information may be given globally by remuneration item. When members of the governing bodies are corporations, the above requirements shall refer to the individuals representing them.

- 7^a. The sum of the advances and loans granted to the top management staff and members of the governing bodies, both of the controlling company, by any company in the group, stating the interest rate, their essential characteristics and the eventual moneys reimbursed, as well as the obligations undertaken on their account as any kind of guarantee. The advances and loans granted to the top management staff and company directors by companies outside the group referred to in sections 1 and 3 of Article 47 shall also be reported.

This information may be reported globally by each category. When the members of the governing body are corporations, the above requisites shall refer to the individuals who represent them.

- 8^a. The nature and business purpose of agreements not included on the consolidated balance sheet, as well as the financial impact of those agreements, to the extent that such information is significant and necessary to determine the financial situation of the companies included in the consolidation considered overall.

- 9^a. The sum broken down by items of the auditing fees and other services provided by the auditors, as well as those of the persons or firms linked to the auditor, pursuant to the terms of Act 19/1988, dated 12th July, on Accounts Auditing.

10^a. Significant transactions other than the ones within the group, performed by any of the companies included in the group with related third parties, stating the nature of the link, the sum and any other information with regard to the transactions that is necessary to determine the financial situation of the companies included in the consolidation considered overall.

Article 49. 1. The consolidated management report must contain the true presentation of the evolution of the business and situation of the set of companies included in the consolidation, along with a description of the main risks and uncertainty faced.

The presentation shall consist of a balanced, exhaustive analysis of the evolution and results of the business and the situation of the companies included in the consolidation considered overall, taking into account the magnitude and complexity of the venture. To the extent necessary for comprehension of the evolution, the results or situation of the company, this analysis shall include both key indicators of the financial results, as well as, when appropriate, non financial ones, that may be relevant with regard to the specific corporate activity, with inclusion of information on matters related to the environment and personnel.

On providing this analysis, the consolidated management report shall provide, if appropriate, complementary references and explanations on the sums detailed in the consolidated accounts.

2. It must also include information on:

- a) Important events that have arisen after the closing date of the business year of the companies included in the consolidation;
- b) The foreseeable evolution of the set formed by those companies;
- c) The activities of that set in matters of research and development;
- d) The number and face value or, failing that, the book value of the set of shares or stake in the controlling company held by it, by subsidiaries, or by a third person acting in his own name, but on account of these.

3. With regard to the use of financial instruments, and when relevant for valuation of assets, liabilities, financial situation and results, the management report shall include the following:

- a) Objectives and policies for management of the corporate financial risk, including the policy applied to cover each significant type of transaction foreseen, for which coverage accounting is used;
- b) The exposure the company has to price risk, credit risk, liquidity risk and cash flow risk;

4. When the company obliged to draw up consolidated annual accounts has issued securities admitted to trading on a regulated market in any member State of the European Union, it shall include its corporate governance report in a separate section of the consolidated management report.

5. The information the management report contains shall not justify its absence from the annual accounts when such information must be included therein pursuant to what is set forth in the preceding Articles and the enacting regulations.

TITLE IV

General provisions on business contracts^{*43}

Article 50. Business contracts, in all matters related to their requisites, amendments, exceptions, interpretation and extinction and capacity of the parties to the contract, shall be governed in all matters not specifically set forth in this Code or in the special Laws, by the general rules of ordinary Civil Law.⁴⁴

Article 51. Business contracts shall be valid and binding and actionable in court whatever their format and the language in which they are entered into, whatever their class and the quantity they concern, provided their existence is proved by any of the means established in Civil Law. However, depositions by witnesses shall not suffice per se to prove the existence of a contract of an amount exceeding 1,500 pesetas, unless some other evidence is available.

Telegraphic correspondence shall only be binding between the parties to the contract who have previously admitted that means in a written contract, provided the telegrams fulfil the conditions or conventional signs that have previously been established by the parties to the contract, if they have thus agreed.⁴⁵

Article 52. The following shall be an exception to what is set forth in the preceding Article:

- 1º. Contracts that, according to this Code or the special Laws, must be set down in writing or require necessary formats or formalities to be effective;
- 2º. Contracts entered into in a foreign country whose law requires specific deeds, formats or formalities for validity, even if these are not required under Spanish law.

In either case, contracts that do not fulfil the circumstances respectively required shall not be binding or actionable in court⁴⁶.

Article 53. Illicit clauses shall not be binding or actionable, even though they concern business transactions.⁴⁷

Article 54. If the party that made the offer and that which accepted it are in different places, there is consent from the moment the party offering knows the acceptance or since, it having been sent, the party accepting cannot ignore it if acting in good faith. In that case, the contract shall be presumed to have been entered into at the place where offer was made.

In contracts entered into using automatic devices, there is consent from the moment the acceptance is given.⁴⁸

⁴³ * See Act 40/2002, dated 14th November, that regulates vehicle parking contracts (Official State Gazette number 174, dated 15th November); Royal Legislative Decree 1/2007, dated 16th November, that approves the consolidated text of the General Act for Consumer and User protection and other complementary laws (Official State Gazette number 287, dated 30th November); Act 7/1998, dated 13th April, on General Contracting Conditions (Official State Gazette number 89, dated 14th April); Act 7/1996, dated 15th January, on Organization of Retail Trade (Official State Gazette number 15, dated 17th January). Also consider Act 34/2002, dated 11th July, on Information Society Services and Electronic Commerce (Official State Gazette number 166, dated 12th July), in particular its Articles 23 and following; Act 34/2002, dated 11th July, on Information Society Services and Electronic Commerce (Official State Gazette 166, dated 12th July), and Act 59/2003, on electronic signatures (Official State Gazette number 304 dated 20th November) and Order EHA/962/2007, that establishes certain provisions on telematic invoicing and electronic conservation of invoices, set forth in Royal Decree 1,496/2003 dated 28th November, that approves the Regulations that regulate invoicing obligations (Official State Gazette number 90, dated 14th April), as well as Act 56/2007, dated 28th December, on Measures to Boost the Information Society (Official State Gazette 312 dated 29th December).

⁴⁴ Article 50. See Articles 1,254 to 1,314 of the Spanish Civil Code.

⁴⁵ Article 51. In matters of evidence, see Articles 281 and following of the Civil Procedure Act.

⁴⁶ Article 52. N.1. See Articles 7 of the Public Limited Companies Act, 11 of the Private Limited Companies Act and 1,280 of the Spanish Civil Code.

⁴⁷ Article 53. 1,255 and 1,275 of the Spanish Civil Code.

⁴⁸ Article 54. New drafting according to the 4th Additional Provision, section 2, of Act 34/2002, dated 11th July, on the Information Society Services and Electronic Commerce (Official State Gazette number 166, dated 12th July), that has also amended the content of Article 1,262 Spanish Civil Code. With regard to mail order sale, see Articles 38 and following of the Act on Organization of Retail Trade and on sales conducted using automatic devices, Articles 49 and following of the same Act. Also, see Article 29 of Act 34/2002, dated 11th July, on Information Society Services and Electronic Commerce.

Article 55. Contracts in which an Agent or Broker intervenes shall be perfected when the parties to the contract have accepted his proposal.

Article 56. In business contracts in which a compensation clause is set against those in breach, the party damaged may demand fulfilment of the contract by the means specified at law or the penalty specified. However, when one of these two actions is exercised, the other shall expire, except if there is a pact to the contrary.⁴⁹

Article 57. Business contracts shall be implemented and fulfilled in good faith, pursuant to the terms under which they were made and drafted, without misinterpreting them through arbitrary constructions of the correct, proper and usual sense of the words said or written, or restriction of the effects naturally arising from the way in which the parties to the contract would have explained their will and contracted their obligations.

Article 58. If any divergence were to appear between the copies of a contract presented to the parties and those formalised when an Agent or Broker has intervened, the terms recorded on the latter's books shall apply, provided they comply with the law.

Article 59. If any doubts arise that cannot be resolved according to the terms established in Article 2 of this Code, the matter shall be decided in favour of the debtor.

Article 60. In all calculations of days, months and years, the following shall be understood: the day shall be twenty-four hours long; the months, as set forth in the Gregorian calendar, and the year 365 days.

These shall not include bills of exchange, promissory notes and cheques, as well as loans, with regard to which the specific terms established for these in the Bills of Exchange and Cheques Act and this Code, respectively, shall apply.⁵⁰

Article 61. No terms of grace, courtesy or others shall be recognised that, under any name whatsoever, postpone the fulfilment of business obligations, but rather, those the parties have set out in the contract, or on the basis of an imperative provision of the law.⁵¹

Article 62. Obligations that do not have a term pre-set by the parties, or by the provisions of this Code, shall be callable 10 days after contracted, if they only bring about ordinary action and, on the same day, if involving execution.⁵²

Article 63. Fulfilment of business obligations shall be deemed to be in arrears as from:

- 1º. In contracts that have a day set for their fulfilment, due to the will of the parties or by Law, on the day following their maturity;
- 2º. In those that do not have this, as from the day on which the creditor judicially seizes the debtor, or alleges damages and losses filing against him before a Judge, Notary Public or other public official authorised to admit such a noting.⁵³

⁴⁹ Article 56. On penalty clause obligations, see Articles 1,152 to 1,155 of the Spanish Civil Code.

⁵⁰ Article 60. Articles 5 of the Spanish Civil Code and 305 of the Civil Procedure Act. Also, see, in relation to paragraph two of this principle, Articles 313, 454 and 455 of the Code of Commerce.

Paragraph two of this Article was redrafted by Act 19/1985, on Bills of Exchange and Cheques.

⁵¹ Article 61. See Articles 942 and 955 of this Code and 1,124 of the Spanish Civil Code

⁵² Article 62. See Articles 1,113 of the Spanish Civil Code and 51 of the Civil Procedure Act.

⁵³ Article 63. See Articles 1,096, 1,100 and 1,108 of the Spanish Civil Code, as well as Act 3/2004, dated 29th December, which establishes measures to combat defaulting in business transactions (Official State Gazette 314, of 30th December).

TITLE V

On places and houses to contract business

SECTION ONE. On stock exchanges

Articles 64 to 73⁵⁴. (...)

SECTION 2. On stock exchange operations

Articles 74 to 80. (...)

SECTION 3 On other public contracting locations On trade fairs, markets and shops

Article 81. Both the Government as well as business companies, subject to the conditions set forth in Article 65 of this Code, may establish trading markets or posts.⁵⁵

Article 82. The competent authority shall announce the venue and time when the fairs are to be held and the policing conditions that must be observed at these.

Article 83. Sale–purchase contracts entered into at the fair may be cash or instalment; the former must be fulfilled on the same day as formalised, or at the latest, within the following twenty–four hours.

Should these hours elapse with neither of the parties having demanded fulfilment, such contracts shall be considered void and the tokens, deposit or guarantee thereon shall be forfeited in favour of the party that has received them.⁵⁶

Article 84. Disputes arising at fairs on contracts entered into there shall be decided at verbal trial by the Municipal Judge of the town where the fair is held, according to the specifications of this Code, provided the value of the item subject to litigation does not exceed 1,500 pesetas.

If there is more than one Municipal Judge, the one chosen by the plaintiff shall be competent.

Article 85. Purchase of merchandise in stores or shops open to the public shall cause the rights of the owner to prescribe in favour of the purchaser with regard to the merchandise acquired, except for the right, if applicable, of the owner of the objects sold to lodge the relevant civil or criminal action to which he may be entitled against whoever sells them unduly.

For the purposes of this limitation, the following shall be deemed to be stores or shops open to the public:

⁵⁴ Articles 64 to 80: Repealed by the Enactment Regulations of the Stock Market Act, dated 28th July 1988 (Official State Gazette number 181, of 29th July).

⁵⁵ Article 81. See Royal Decree 2,621/1983m, dated 29th September, on International Trade Fairs; Royal Decree 2,493/1994, dated 23rd December, that repeals the Decree dated 26th May 1943 and regulates holding of Sample and Exhibition Fairs in Spain and Abroad (Official State Gazette number 24, of 28th January 1995).

Also, see Articles 10, numbers 27 and 12.6 of the Statute of Autonomy of the Basque Country, 11.6 on Catalonia and Article 27.16 on Galicia. The Acts enacted on fairs and markets in the regional scope are that dated 5th October 1984, by the Autonomous Community of Castile and León; Act dated 27th December 1986, by the Autonomous Community of Extremadura; Act dated 27th December 1986 by the Autonomous Community of Murcia; Act dated 22nd December 1986 by the Autonomous Community of Cantabria; Act dated 7th April 1987 by the Autonomous Community of Castile-La Mancha.

⁵⁶ Article 83. See Article 1,454 of the Spanish Civil Code.

1. Those established by registered businesspersons;
2. Those established by non- registered businesspersons, provided the stores or shops remain open to the public for a space of eight consecutive days, or if announced by means of signs, samples or titles on the actual premises, or by flyers distributed among the public or advertising in the local newspapers.⁵⁷

Article 86. The currency by which the merchandise purchased is paid cash in shops open to the public shall not admit claim *in rem*.⁵⁸

Article 87. Purchases and sales made on the premises shall always be assumed to be made cash, except for evidence to the contrary.

TITLE VI

On Stockbroking Agents and their respective obligations

SECTION ONE. Common provisions on stock brokers ^{*59}

Article 88. The following shall be subject to the business laws as Stockbroking Agents:

- Exchange and Stock Market Agents;
- Stock Brokers;
- Maritime Interpreter Brokers.⁶⁰

Article 89. Services may be provided by Stock Brokers and Agents, whatever their class, both Spaniards and aliens, but only collegiate Agents and Brokers may act as public recorders.

The means to prove the existence and circumstances of the acts or contracts in which non-collegiate Agents intervene shall be those established by Business or ordinary Civil Law to evidence obligations.

Article 90. An Association of Exchange Agents and another of Stock Brokers shall be established in the city of each Stock Exchange, and in maritime cities, one of Maritime Interpreter Brokers.⁶¹

Article 91. The Associations mentioned in the preceding Article shall be comprised of individuals who have obtained the relevant qualification, due to fulfilment of the conditions established under this Code.

Article 92. There shall be a Board of Governors in charge of each Association, elected by the members thereof.

⁵⁷ Article 85. See Article 464 of the Spanish Civil Code.

⁵⁸ Article 86. See Article 464 of the Spanish Civil Code.

⁵⁹ * Consider the Stock Market Act dated 28th July 1988 (Official State Gazette number 181 dated 29th July), mainly the Additional and Transitory Provisions

⁶⁰ Article 88. Royal Decree dated 8th July 1939 (Gazette number 195, dated 14th July), on reorganization of the Corps, gave it the name of Maritime Interpreter Brokers.

⁶¹ Article 90. On the Associations this principle concerns, see Article 6 of the Regulations on Stock Brokerages, approved by Decree 1,506/1967 dated 30th June (Official State Gazette number 168 dated 15th July, correction of errors in Official State Gazette number 191, dated 11th August), 96 and following of the Regulations for the interior regime of the Official Associations of Stock Brokers, approved by Decree 853/1959 dated 27th May (Official State Gazette number 131, dated 2nd June), amended by Decree 3,110/1968 dated 5th December (Official State Gazette number 308 dated 24th December, correction of errors in Official State Gazette number 311 dated 27th December); 3rd of Royal Decree dated 8th July 1930 (Gazette number 195 dated 14th July), that reorganized the Corps of Maritime Interpreter Brokers; 52 and following of the Order dated 30th November 1933 (Gazette number 340 dated 6th December), amended by dated 5th May 1934 (Gazette number 126 dated 5th May), that approves the Regulations for Maritime Interpreter Brokers.

Article 93. Collegiate Brokers shall have the same status as Notaries Public with regard to contracting public bonds, industrial and business securities, merchandise and other acts of commerce included in their profession, within that same city.

They shall keep a register book according to the terms determined in Article 27, recording in it in order, separately and daily, all the operations in which they may have intervened, also being obliged to keep the books with the same solemnities.

The books and policies of Collegiate Brokers shall provide full evidence in court.⁶²

Article 94. The following shall be necessary to join any of the Associations of Agents referred to in Article 90:

- 1º. To be a Spaniard or naturalised alien;
- 2º. To have capacity to engage in business pursuant to this Code;
- 3º. Not to be subject to any correctional or afflictive penalty;
- 4º. To accredit good moral conduct and known probity, by means of a judicial report by three registered businesspersons;
- 5º. To pay the deposit established by the Government at the Deposit Bank or its branches, or at the Bank of Spain;
- 6º. To obtain the relevant diploma from the Ministry of Development, after hearing by the Board of Governors of the respective Association.

Article 95. The collegiate Agents shall have the following obligations:

- 1º. To assure themselves of the identity and legal capacity to contract of the persons in whose transactions they act as intermediaries and, when appropriate, the legitimacy of the signatures of those contracting.

When these are not free to administer their assets, the Agents may not provide their services without these being preceded by due authorisation in the legal manner.

- 2º. To propose the transactions with exactness, precision and clarity, abstaining from making suppositions that may lead the principals to error.
- 3º. To keep secrecy regarding everything related to the negotiations they conducted and not to disclose the names of the persons commissioning them, unless they are required otherwise by the Law or the nature of the operations, or if the parties concerned consent to their names being known.
- 4º. To issue, at the expense of the parties concerned who so request, certification of the respective entries of their contracts.

Article 96. Associate Agents may not:

- 1º. Engage in business on their own behalf;
- 2º. Establish themselves as insurers of business risks;
- 3º. Trade securities or goods on behalf of individuals or companies that are in temporary receivership, or that have been declared bankrupt or subject to bankruptcy proceedings, unless their reinstatement has been obtained;
- 4º. Acquire the bills whose trading they are entrusted for themselves, except in the event of the Agent having to respond for failings by the buyer to the seller;

⁶² Article 93. Drafted pursuant to Article 3 of Act 19/1989 dated 27th July (Official State Gazette number 17 dated 27th July), on adaptation of Companies to the EEC.

5°. Issue certifications that do not refer directly to facts that are recorded in the entries on their books;

6°. Hold office as tellers, bookkeepers or assistants of any businessperson or business establishment.

Article 97. Those breaching the provisions of the preceding Article shall be deprived of their appointment by the Government, following a hearing before the Board of Governors of the person concerned, who may appeal against such resolution by contentious-administrative proceedings.

They shall also be subject to civil liability arising from breach of the obligations of their post.

Article 98. The guarantee for Exchange Agents, for Stock Brokers and Maritime Interpreter Brokers shall be especially applied to the results of their professional operations; those damaged being entitled to take preferential action against same, notwithstanding the others that may be legally appropriate.

That guarantee may not be returned, even when the Agent has ceased to hold office, until the term stated in Article 946 has elapsed, without a claim having been formalised within that term.

The guarantee shall only be applied to liabilities unrelated to office, when the former have been fully covered.

Should the guarantee be used up due to liabilities related to it, or its effective value is decreased for any cause, it must be returned by the Agent within the term of 20 days.

Article 99. In cases of barring, incapacity or suspension from office of Exchange Agents, Stock Brokers and Maritime Interpreter Brokers, the books that must be kept pursuant to this Code shall be deposited at the Business Registry.

SECTION 2^a. On collegiate exchange and stock market agents

Articles 100 to 105.⁶³ (...)

SECTION 3^a. On collegiate stock brokers*⁶⁴

Article 106. In addition to the obligations that are common to all stock brokerage Agents listed in Article 95, Collegiate Stock Brokers shall be obliged:

- 1°. To respond legally for the authenticity of the signature of the last assignor, in the negotiation of bills of exchange or other endorsable securities;
- 2°. To attend and record contracts of sale-purchase, the delivery of securities and their payment, if the parties concerned so request;
- 3°. To collect the bills or endorsable securities traded with his intervention from the assignor;
- 4°. To collect the moneys due for the bills or endorsable securities traded from the taker and deliver them to the assignor.

⁶³ Articles 100 to 105. Repealed by the implementing regulations of the Stock Market Act dated 28th July 1988 (Official State Gazette number 181, dated 29th July).

⁶⁴ * 24th Additional Provision of Act 55/1999, on Tax, Administrative and Social Order Measures, provided for merger of the Corps of Notaries and Collegiate Stock Brokers. In this regard, consider Royal Decree 1643/2000 dated 22nd September, on urgent measures for integration in a sole Corps of Notaries Public and Collegiate Stock Brokers (Official State Gazette number 229, dated 23rd September, correction of errors in Official State Gazette number 234, dated 29th September), and the Instruction dated 29th September 2000, by the Directorate General of Registries and Notarial Offices, on the uniform practice of a sole Corps of Notaries Public and Collegiate Stock Brokers (Official State Gazette number 235, dated 30th September; correction of errors in Official State Gazette 244, dated 11th October). With regard to the regime of seniority and disciplinary organization, see Act 14/2000, dated 29th December (Official State Gazette 313, dated 30th December).

Article 107. Collegiate Stock Brokers shall annotate the operations in which they have intervened on their books, in separate entries, stating the names and address of the parties to the contract, the subject and conditions of the contracts.

In sales, they shall state the quality, quantity and price of the item sold, place and date of delivery and manner in which the price is to be paid.

In trading bills of exchange, the dates, points of issue and payment, terms and maturities, names of the party issuing, endorser and payer shall be annotated, those of the assignor and taker and the exchange agreed.

In insurance with reference to the policy, these shall state, in addition to the number and date thereof, the names of the insurer and insured, object of the insurance, its value according to the parties to the contract, the premium agreed and, when appropriate, the place of loading and unloading, and the precise and exact name of the ship or means by which the carriage is to be performed.⁶⁵

Article 108. On the day when the contract is entered into, the Collegiate Stock Brokers shall deliver each one of the parties a signed certificate stating everything they have agreed.

Article 109. In cases when a written contract is issued due to the convenience of the parties, the Broker shall certify at the foot of the duplicates and keep the original.

Article 110. Collegiate Stock Brokers may, in concurrence with Maritime Interpreter Brokers, perform the duties carried out by the latter, subject to the specifications of the following Section of this Title.

Article 111. The Association of Brokers, where there is not one of Agents, shall issue a note of current exchange rates and prices of goods on each trading day; to which end two members of the Board of Governors shall attend the Stock Exchange meetings, and they shall send a certified copy of that note to the Business Registry.

SECTION 4^a On collegiate maritime interpreter brokers^{*66}

Article 112. In order to practice as a Maritime Interpreter Broker, in addition to fulfilling the requisites established for Intermediary Agents in Article 94, it shall be necessary to accredit, either by examination, or by public establishment certificate, knowledge of two foreign modern languages.

Article 113. The obligations of the Maritime Interpreter Brokers shall be:

1. To intervene in charter contracts, maritime insurance and bottomry loans, when required to do so;
2. To aid the Masters and officers of foreign ships and to act as interpreters for them in the statements, protests and other actions they are required to provide before the Courts and Public Offices;
3. To translate the documents that the said foreign Masters and officers may have to lodge before those same offices, whenever a doubt arises with regard to their meaning, certifying the translations are truly and faithfully performed;
4. To represent them on trial when neither they, nor the ship owner or consignor are present.

⁶⁵. Article 107. See, on the books of Stock Brokers, Articles 32 to 40 of the Regulations for the Interior Regime of Official Associations of Stock Brokers dated 27th May 1959 (Official State Gazette number 131 dated 2nd June), amended by Decree 3,110/1968 dated 5th December (Official State Gazette number 308 dated 24th December; correction of errors in Official State Gazette number 311 dated 27th December and the Order dated 24th July 1980, cited in the note to Article 102).

⁶⁶ * See Royal Decree dated 8th July 1930 (Gazette number 195 dated 14th July), that reorganized the Corps and gave it the name of Maritime Interpreter Brokers, and the Order dated 30th November 1933 (Gazette number 340, dated 6th December) that approved the Regulations of Maritime Interpreter Brokers, amended by that dated 5th May 1934 (Gazette number 126 dated 6th May).

Article 114. It shall also be an obligation of the Maritime Interpreter Brokers to keep:

- 1º. A book to copy the translations made, inserting them literally therein;
- 2º. A record of the name of the Masters to whom assistance their professional is provided, stating the flag, name, class and tonnage of the ship and her ports of origin and destination;
- 3º. A day book of the charter contracts in which they have intervened, stating in each entry the name of the ship, her flag, registration and tonnage; those of the Master and charterer; price and destination of the cargo; currency in which it is to be paid; advances on these, if any; the items the cargo consists of; conditions agreed between the charterer and Master on the stop-overs and the term set to commence and conclude loading.⁶⁷

Article 115. The Maritime Interpreter Broker shall keep a copy of the contract or contracts entered into between the Master and charterer.

BOOK II

On special business contracts

TITLE ONE

On business companies^{*68}

SECTION ONE. On companies, their incorporation and classes

Article 116. The articles of incorporation by which two or more persons reach a covenant to place goods, an industry or any of these things in a common fund, to obtain a profit, shall be a business company, whatever the class thereof, provided it is incorporated pursuant to the terms of this Code.

Once the business company is incorporated, it shall have legal personality in all its acts and contracts.

Article 117. The articles of incorporation of a business company entered into pursuant to the essential legal requisites shall be valid and binding between those parties thereto, whatever the form, conditions and licit and honest combinations that constitute it, provided they are not specifically prohibited by this Code.⁶⁹

Article 118. Contracts between business companies and any persons able to enter into a binding contract shall be equally valid and effective, provided they are licit and honest, and the requisites stated in the following Article are fulfilled.

⁶⁷ Article 114. See Article 10 of the Royal Decree dated 8th July 1930 (Gazette number 195 dated 14th July) and 34 of the Regulation dated 30th November 1933 (Gazette number 340 dated 6th December).

⁶⁸ * See Articles 1,665-1,708 of the Spanish Civil Code and the Public Limited Companies Acts, Consolidated Text dated 22nd December 1989, and Private Limited Act dated 23rd March 1995; Business Registry Regulation dated 19th July 1996; Criminal Code approved by Organic Act 10/1995, dated 23rd November (Official State Gazette number 281 dated 24th November) Articles 290 to 297 on corporate offences. Also see Act 12/1991 dated 29 April, on Economic Interest Groups (Official State Gazette number 103 dated 30th April); Act 3/1987 dated 2nd April, General on Co-operatives (Official State Gazette number 84 dated 8th April); Act 4/1997 dated 24th March, on Labour Companies (Official State Gazette number 72 dated 25th March); Act 1/1994 dated 11th March, on the Legal Regime of Reciprocal Guarantee Companies (Official State Gazette number 61 dated 12th March); Act 1/1999 dated 5th January, that regulates Capital Risk Entities and their management companies (Official State Gazette 5th dated 6 January); Act 46/1984, that regulates Collective Investment Institutions (Official State Gazette number 310 dated 27th December). Consider Act 2/2007 dated 15th March, on Professional Companies (Official State Gazette number 65 dated 16th March)

⁶⁹ Article 117. Its section 2 was repealed by Act 19/1989 dated 25th July, on partial reform and adaptation to the EEC Directives of companies (Official State Gazette number 178, dated 27th July).

Article 119. Before commencing their operations, all business companies must record their incorporation, terms and conditions in a public deed that shall be presented for inscription at the Business Registry, pursuant to the terms of Article 17.

Any additional deeds that in any way amend or alter the original articles of incorporation of the company shall be subject to these same formalities, pursuant to the terms set forth in Article 25.

Partners may not enter into secret agreements, but rather, these must all be set forth in the articles of incorporation.⁷⁰

Article 120. Those in charge of the company management who breach the terms set forth in the preceding Article shall be held severally liable to persons outside the company with whom they may have entered into contracts on its behalf.⁷¹

Article 121. Business companies shall be governed by the clauses and conditions of their contracts and, in everything not determined and specified therein, by the provisions of this Code.

Article 122. As a general rule, business companies shall be incorporated by adopting one of the following forms:

1. General partnership;
2. Limited or limited liability partnership;
3. Public limited company;
4. Private Limited Company.⁷²

Article 123.⁷³ (...)

Article 124. Mutual insurance companies for fire, of tontine life insurance schemes for assistance in old age, and of any other kind, and production, credit and consumption co-operatives, shall only be considered to have a business nature and shall be subject to the provisions of this Code when they perform acts of commerce outside their mutual company activities or when they become fixed premium companies.⁷⁴

SECTION 2. On general partnerships^{*75}

Article 125. The articles of incorporation of the general partnership shall state:

⁷⁰ Article 119. See Articles 94 to 96 of the Business Registry Regulations on registration of companies in general; 209 to 212, on registration of General and Limited Partnerships 114 to 173, on registration of Public Limited Companies; 175 to 208 on registration of Private Limited Companies, and 310 to 319, on issue of bonds. Also, see Articles 1,669 of the Spanish Civil Code and 7 and 16 of the Public Limited Companies Act.

⁷¹ Article 120. See Articles 17.2 and 30 of the Public Limited Companies Act.

⁷² Article 122. New drafting in Article 14, Act 19/1989 dated 25th July, on adaptation of companies to the EEC (Official State Gazette number 178 dated 27th July). N.1. See Articles 125 to 144 of this Code.
N.2. Articles 145 to 150 of this Code.

N.3. Public Limited Companies have their special regulation in the Consolidated Text dated 22nd December 1989. Sports public limited companies are regulated in Articles 19 to 29 of the Sports Act, dated 15th October 1990 (Official State Gazette dated 17th October), and in Royal Decree 1,084/1991 dated 5th July (Official State Gazette dated 15th July). Private Limited Companies, unknown to this Code, are regulated by Act dated 23rd March 1995 (Official State Gazette number 71 dated 24th March). Consider Act 2/2007 dated 15th March, on professional companies (Official State Gazette number 65 dated 16th March).

⁷³ Article 123. Repealed by Act 19/1989 dated 25 July, on partial reform and adaptation of to the EEC Directives of companies legislation (Official State Gazette number 178, dated 27th July).

⁷⁴ Article 124. On matters of co-operatives, bear in mind Act 3/1987 dated 3rd April, General on Co-operatives. On Credit Co-operatives, Act 13/1989 dated 26th May, Articles 220, 290.2 and Transitory Provision 8 of the Business Registry Regulations. With regard to insurance co-operatives and mutual companies, see Articles 9 and 10 of Act 30/1995 dated 8th November, on Organization and Supervision of Private Insurance (Official State Gazette number 268, dated 9th November), and Articles 11 to 23 of Royal Decree 2,486/1998 dated 20th November, that approves the Regulations on Organization and Supervision of Private Insurance (Official State Gazette number 282, dated 25th November).

⁷⁵ * See Articles 209 to 212 of the Business Registry Regulations on registration of these companies.

- The name, surname and address of the partners;
- Its registered office;
- The name and surname of the partners to whom the management of the company and use of the corporate signature is entrusted;
- The capital each partner contributes in cash, loans or securities, stating the value given to each of these or the basis on which the valuation must be performed;
- The term of the company;
- The moneys that, when appropriate, are assigned to each managing partner annually for his personal expenses;
- The deed may also state all the other licit terms and special conditions the partners wish to establish.

Article 126. The general partnership must engage in business under the name of all its partners, of any of them or one alone, and in the latter two cases, the name or names stated must be followed by the words “and Company”.

This company name shall constitute the company name or signature, in which the name of a person who is not a present member of the company may never include.

Those who do not belong to the company and include their name in the company name, shall be subject jointly and severally liable, notwithstanding criminal liability, should this arise.

Article 127. All the partners forming a general partnership, whether or not they are its managers, shall be bound both personally and jointly and severally, with all their belongings, subject to the result of the operations performed in name and on behalf of the company, under its signature and by a person authorised to use it.⁷⁶

Article 128. Partners not duly authorised to use the company signature shall not bind the company with their acts and contracts, although they may execute them in its name and using its signature.

The liability for such acts in the civil or penal order shall befall their authors alone.

Article 129. If the management of general partnerships has not been limited to any of the partners by a special deed, they shall all be entitled to take part in the management and running of the common business, and the partners present shall agree over all contracts or obligations of interest to the company.⁷⁷

Article 130. No new obligations can be contracted against the will of one of the managing partners who specifically states this; however, if they were to be contracted in spite of this, they shall not be cancelled due to that reason and they shall take effect, notwithstanding the partner or partners contracting them being held liable to the company for the losses they may cause.

Article 131. When specific partners are entrusted the management, the others may not interfere with or hinder their management, nor prevent its effects.

Article 132. When the discretionary power to administer and use the company signature has been granted under the specific condition of the company contract, the person granted it may not be deprived of this; however, if he were to misuse that power, and his management were to cause damage to the corporate assets, the other partners may appoint a co-manager from among them to intervene in all the operations, or request the termination of the contract before the competent Judge or Court of Law, that must declare this, if that damage were proven.⁷⁸

⁷⁶ Article 127. See Article 923 of the Code of Commerce.

⁷⁷ Article 129. See Articles 1,692 to 1,695 of the Spanish Civil Code.

⁷⁸ Article 132. The procedure to follow for appointment of the co-manager is regulated in Articles 2,162 to 2,166 of the Civil Procedure Act of 1881. Also, see Article 211 of the Business Registry Regulations.

Article 133. In all general partnerships, all the partners, whether managers or not, shall be entitled to examine the state of the management and of the accounts and to make, according to the terms set forth in the articles of incorporation of the company, or the general provisions of the law, the complaints they may believe convenient in the common interest.⁷⁹

Article 134. The negotiations conducted by the partners in their own name and with their private funds, shall not be reported to the company, nor shall give rise to any liability whatsoever as far as the latter is concerned, these being of the nature that the partners may licitly perform on their own account and at their own risk.

Article 135. Partners may not use the company funds or use the corporate signature for business on their own account and, if they do so, they shall forfeit the part of the gains to which they might have been entitled on the operation or operations thus performed in favour of the company, and this may give rise to termination of the articles of incorporation with regard to the partners involved, notwithstanding reimbursement of the funds they may have made use of, and also compensating the Company for all the damages and losses arising therefrom.

Article 136. In general partnerships that do not have a specific type of business, the members thereof may not perform operations on their own account without preceding consent from the company, which may be withheld without having to accredit that this causes it an effective and manifest loss.

Partners who breach this provision shall contribute the profit arising from these operations to the common assets and shall individually bear the losses, if any.⁸⁰

Article 137. If the company has determined in its articles of incorporation the type of business it is to carry out, the partners may licitly conduct all business operations they may see fit on their own account, provided this does not belong the kind of business performed by the company they are partners of, if there is no special agreement to the contrary.

Article 138. The working partner may not take charge of negotiations of any kind, except if the company specifically allows this; and if he were to do so, it shall be at the discretion of the capitalist partners to exclude him from the company, depriving him of his profit therein, or to take advantage of gains he might have obtained in breach of this provision.

Article 139. In general or limited partnership companies, no partner may separate or remove any moneys from the common assets other than those assigned to each one for his personal expenses; and if he were to do so, he may be forced to reimburse them, as if he had not paid up the share in the capital he undertook to contribute to the company.⁸¹

Article 140. If the articles of association have not determined the relevant part in the profit to be assigned to each partner, this shall be divided among them in proportion to the stake each holds in the company, including the working partners in the distribution, if any, in the class of the capitalist partners with the smallest stake.

Article 141. The losses shall be assigned in the same proportion between the capitalist partners, without including the industrial ones, unless the latter have been included in the share thereof in a specific clause.

Article 142. The company must pay the partners the expenses they incur and compensate them for losses they may suffer, immediately and directly due to the business they are placed in charge of; but it shall not be obliged to compensate damages the partners suffer, for which they are personally to blame, fortuitous cases, or other causes that are independent of the business, while they have taken charge of performing this.⁸²

Article 143. No partner may convey the interest he holds in the company to another person, nor have such a person stand in for him to perform the duties of office he is assigned in the company management, without prior consent from the other partners.⁸³

Article 144. Damage arising to the corporate interests due to malice, *ultra vires* acts or gross negligence by one of the partners shall be considered as giving rise to the obligation to compensate it, if the other partners so require,

⁷⁹ Article 133. See Article 2,166 of the Civil Procedure Act of 1881.

⁸⁰ Article 136. See Article 218.5 of this Code.

⁸¹ Article 139. See Articles 170, 171 and 218.4 of the Code of Commerce.

⁸² Article 141. See Articles 1,689 to 1,691 of the Spanish Civil Code.

⁸³ Article 143. See Article 1,696 of the Spanish Civil Code.

provided it cannot be deduced from some act that approval or ratification, whether specific or implicit, of the event on the basis of which the claim is to be based had been given.⁸⁴

SECTION 3^a. On limited partnership companies^{*85}

Article 145. The articles of incorporation of a limited partnership company shall record the same particulars as in the case of the general one.⁸⁶

Article 146. Limited partnership companies shall engage in business under the name of all the general partners, of some of them or one alone, and in the latter two cases, the words “and Company” must be added to the name or names stated, and in all of them, those of “Limited Partnership Company”.

Article 147. This general name shall be used as the company name; it may never include the names of the limited partners.

If any limited partner were to include his name, or to consent the inclusion thereof in the company name, he shall be subject, with regard to persons outside the company, to the same liabilities as the managers, without acquiring more rights than those to which he is entitled as a limited partner.

Article 148. All the general partners, whether or not they are managers of the limited partnership, shall be held personally and severally liable for the results of its operations, under their own terms and with the same extent to those of the general partnership, as provided in Article 127.

They shall also have the same rights and obligations as the partners of the general partnership as specified in the preceding Section.

The liability of the limited partners for the obligations and losses of the company shall be limited to the funds they have contributed or undertaken to contribute to the partnership, except in the case foreseen in Article 147.

The limited partners may not perform any act of management of the interests of the company, even in the capacity of proxy of the managing partners.⁸⁷

Article 149. The provisions contained in Article 144 shall be applicable to the partners of limited partnership companies.

Article 150. The limited partners may not examine the status and situation of the company management other than at the times and under the penalties specified in the articles of incorporation agreement or its addenda.

If the articles of incorporation do not contain such a specification, the limited partners shall necessarily be provided the balance sheet at the year-end, making the necessary records and documents to check it and judge the operations available to them for a term that may not be less than 15 days.

SECTION 4^a. On limited share partnership **(Repealed)**⁸⁸

Article 151 to 157.⁸⁹

Articles 158 to 168.⁹⁰ (...)

⁸⁴ Article 144. See Article 1,686 of the Spanish Civil Code.

⁸⁵ * See Articles 209 to 212 of the Business Registry regulations on registration of these companies.

⁸⁶ Article 145. See Article 125 of this Code.

⁸⁷ Article 148. See Article 923 of this Code.

⁸⁸ Repealed by sole repealing provision of Royal Legislative Decree 1/2010, dated 2nd July

⁸⁹ Repealed by sole repealing provision of Royal Legislative Decree 1/2010, dated 2nd July

⁹⁰ Articles 158 to 168. Repealed by Act 19/1989 dated 25 July, on partial reform and adaptation to the EEC Directives of companies legislation (Official State Gazette number 178 dated 27 July).

Article 169. Funds belonging to aliens held in public limited companies shall not be subject to reprisals in the event of war.

SECTION 6^a. Rights and obligations of the partners

Article 170. If, within the term agreed, a partner were not to contribute the portion of capital he has undertaken to contribute to the company assets, the company may opt to either take enforcement action against his assets to collect the share in the capital he has not delivered, or terminate the agreement with regard to the partner in default, who shall forfeit the moneys to which he would have been entitled in the company assets.⁹¹

Article 171. A partners who delays full delivery of their capital contributions for any reason, once the term set in the articles of incorporation has elapsed, or if not set therein, when the cash till is established, shall pay the common funds the legal interest for the moneys not delivered in due time and compensation for the damages his delay might have caused.⁹²

Article 172. When the capital or the part thereof that a partner is to contribute consists of commercial paper, its valuation shall be performed in the manner foreseen in the articles of incorporation and, if there is no special clause concerning this, it shall be performed by the appraisers chosen by both parties and according to local market prices, their subsequent increases or decreases being borne by the company.

In the event of disagreement between the appraisers, a third party shall be appointed at random from among those of his kind included among the largest taxpayers in the district, to settle the dispute.⁹³

Article 173. The managers or administrators of business companies may not refuse partners the right to examine the documentary evidence on which the balance sheets used to reflect the state of the corporate management are based, except as set forth in Articles 150 and 158.⁹⁴

Article 174. Creditors of a partner shall not have, with regard to the company, even in the event of bankruptcy of the former, any right other than that of sequestrating and receiving the entitlement the debtor partner may have in the profit or liquidation.

What is set forth at the end of the preceding paragraph shall not be applicable to share companies except if these are nominative, or when there is definitive evidence of the identity of their legitimate owner, in the case of bearer shares.⁹⁵

SECTION 7^a. On special rules for lending companies

Article 175. The following shall be the main operations that pertain to the nature of these companies:

- 1^a. To underwrite or take loans with the Government, provincial or municipal corporations;
- 2^a. To acquire public funds and shares or debentures of all kinds of industrial firms of credit companies;
- 3^a. To form companies for railways, canals, factories, mines, docks, general deposit warehouses, lighting, cutting and ploughing, irrigation, drainage and any other industrial activities or those of public utility;
- 4^a. To perform merger or transformation of all kinds of business companies and take charge of issue of shares or debentures of these;

⁹¹ Article 170. See Articles 218.4 of this Code and 42 to 46 of the Public Limited Companies Act.

⁹² Article 171. See Articles 42 to 46 of the Public Limited Companies Act.

⁹³ Article 172. See Article 210.2 of the Business Registry Regulations.

⁹⁴ Article 173. See Articles 133 of this Code and 48.2 d), 122 and 212 of the Public Limited Companies Act. Also, see Article 86 of the Private Limited Companies Act.

⁹⁵ Article 174. Declared applicable to Public Limited Companies by the Decree dated 14th December 1951 (Official State Gazette number 363, dated 29 December).

- 5^a. To administer and let all kinds of contributions and public services and to execute the contracts signed to that end on its account or assign them, with approval from the Government;
- 6^a. To sell or provide as guarantee all the shares, debentures and securities acquired by the company, and to exchange them when deemed convenient;
- 7^a. To lend against gilts, shares or obligations, goods, fruits, crops, estates, factories, ships and their cargo, and other stock, and to open current account credits, receiving items of equal class in guarantee;
- 8^a. To perform all kinds of collection or payment on behalf of other companies or persons and to execute any operation on account of others;
- 9^a. To receive the deposit of all kinds of securities and cash, and to keep current accounts with any corporations, companies or persons;
- 10^a. To issue and discount bills and other documents of exchange.

Article 176. Lending companies may issue debentures for an equal sum to that they have used and that is represented by stock in portfolio, submitting to the terms specified in the Title on Business Registration.

These debentures shall be nominative or to the bearer, and at set term, that shall not be less than 30 days in any case, with the repayment, if any, and with the interest that shall be determined.⁹⁶

SECTION 8^a. Issuing and discounting banks^{*97}

Article 177. The following shall be the main operations that pertain to the nature of these companies:

Discounting, deposits, current accounts, collection, loans, giros and contracts with the Government or public corporations.

Article 178. Banks may not perform operations at more than 90 days, nor may they discount bills of exchange, promissory notes or other commercial paper without them being guaranteed by two responsible signatures.

Article 179. Banks may issue bearer notes, although such banknotes shall not be legal tender. However, this freedom to issue bearer notes shall remain suspended while the privilege now enjoyed by the National Bank of Spain under the special laws subsists.⁹⁸

Article 180. Banks shall keep at least one quarter of the amount of the deposits and cash current accounts in notes in circulation in cash in their safes.

Article 181. Banks shall be obliged to immediately change their notes for cash when these are presented by the bearer.

Failure to comply with this obligation shall give rise to enforcement action in favour of the bearer, following a demand for payment through a Notary Public.⁹⁹

⁹⁶ Article 176. See Articles 310 and following of the Business Registry Regulations.

⁹⁷ * See note to Article 117.

⁹⁸ Article 179. Decree Law 18/1962 dated 7th June (Official State Gazette number 141, dated 13th July), amended by Decree Act 2/1967 dated 16th February (Official State Gazette number 49, dated 27th February), that nationalised and reorganised the Bank of Spain. See Act 30/1980, dated 21st June (Official State Gazette 154, dated 27th June), that regulates its governing bodies, and Act 13/1994, dated 1st June, on the Autonomy of the Bank of Spain (Official State Gazette number 131, dated 2nd June).

⁹⁹ Article 181. The Act dated 9th November 1939 (Official State Gazette number 321, dated 17th November), established the principle of legal tender and full acquittal power of banknotes.

Article 182. The sum of the notes in circulation, along with the sum represented by the deposits and current accounts, may not exceed the amount of the cash reserve and portfolio securities realisable within the maximum term of ninety days in any case.

Article 183. Issuing and discounting banks shall publish their financial statement, at least monthly and under the responsibility of their governors, in the Official Gazette and Journal of the Province.

SECTION 9^a. Railway companies and of other public works ^{*100}

Article 184. The following shall be the main operations that pertain to the nature of these companies:

- 1^a. Construction of railways and other public works of any kind whatsoever;
- 2^a. Their operation, either perpetually or for the term stated in the concession.

Article 185. The share capital of the companies, along with subsidies, if any, shall amount to at least half the sum of the total budget of the works.

Companies may not be incorporated while they do not have all the corporate capital underwritten and at 25 per cent thereof paid up.

Article 186. Railway companies and of other public works may issue bearer or nominative debentures, freely and with no further limitations than those set forth in this Code and those established in their respective Articles of Association.

These issues must necessarily be registered at the Business Registry of the province; and if the obligations are mortgage based, these issues shall also be recorded at the relevant Property Registries.

Issues of a prior date shall take preference over subsequent ones for payment of the coupon and to repay the principal of the debentures, if any.

Article 187. The debentures the companies issue shall be repayable, or not, according to their will and as set forth in their Articles of Association.

Whenever railways or other public works that enjoy State subsidy are involved, or for construction of which a legislative or administrative concession has preceded, or if it is a temporary concession, the debentures the concession holding company issues shall be repaid or expire within the term of the concession and the State shall receive the works at the end of that term, free of any encumbrance whatsoever.

Article 188. The railway companies and of other public works may sell, assign and transfer their rights in the respective companies and may also merge with other similar ones.

In order for these transfers and mergers to take effect, it shall be necessary:

- 1^o. For them to be unanimously consented by the partners, unless the Articles of Association have established other rules to alter the corporate object;
- 2^o. For them to also be consented by all the creditors. That consent shall not be necessary when the purchase or merger is performed without confusing the guarantees and mortgages and when the creditors conserve the integrity of their respective rights.

¹⁰⁰ * On railways, see Act 16/1987 dated 30th July, on Organization of Land Transport, as well as the Act dated 24th January 1941, on Bases for Railway and Transport Organization, taking into account that bases 4 to 18 have been repealed by Act 16/1987, aforesaid, and Articles 223 to 299 of Royal Decree 1,211/1990 dated 28th September, that approves the Enacting Regulations of the Act on Organization of Land Transport.

Also, consider Royal Decree 121/1994, dated 28th January, which approves the Statute of the Spanish National Railway Network (RENFE). Concerning railways, the laws and regulations handed down by the Autonomous Communities must be carefully considered.

Article 189. No authorisation whatsoever by the Government shall be required for the transfers and mergers to which the preceding Article refers, even when the works have been declared of public utility for the purposes of expropriation, unless the company has a direct subsidy by the State, or the works have been granted by an Act of Parliament or other governmental provision.

Article 190. The executive action to which the Civil Procedure Act refers, with regard to coupons of debentures issued by the railway companies and of other public works for which payment is due, as well as those same debentures that are due for repayment, if any, may only be taken against the liquid yield obtained by the company and against the other assets it owns, not forming part of the way or works, nor being necessary for their operation.¹⁰¹

Article 191. Railway companies and of other public works may put the surplus funds from the construction, operation and payment of loans at their respective maturities, to the use they see fit, subject to their Articles of Association.

Placement of those surpluses shall be performed by combining the terms, so the construction, conservation, operation and payment of credits are fulfilled in all cases, under the responsibility of the directors.

Article 192. Once expiry of the concession has been declared, the creditors to the company shall have the following guarantees:

- 1º. The liquid yields of the company;
- 2º. When those yields do not suffice, the liquid product of the works sold at public auction, for the remaining term of the concession;
- 3º. The other assets the company has, if these do not form part of the way or works, if their movement or operation is not necessary.

SECTION 10^a. General deposit warehouse companies *¹⁰²

Article 193. The following shall be the main operations that pertain to the nature of these companies:

- 1^a. Deposit, conservation and custody of fruit and merchandise entrusted to them;
- 2^a. Issue of nominative or bearer receipts.

Article 194. The receipts general deposit warehouse companies issue for the fruit and merchandise they admit to custody shall be negotiable, shall be transferred by endorsement, assignment or any other title of transferral of ownership, depending on whether these are nominative or bearer, and these shall have the force and value of a business record.

These receipts must state the kind of merchandise, with the number or quantity each one represents.

Article 195. The holder of the receipts shall have full ownership of the goods deposited in the company's warehouses, and shall be exempt of liability for claims against the depositary, the endorsers or previous holders, except if these are due to the transport, storage and conservation of the merchandise.

Article 196. The creditor who, having a receipt in legitimate pledge, is not paid on the day of maturity of his credit, may require the company to dispose of the goods deposited, in a sufficient amount for the payment, and shall have preference over the other debts of the depositary, except for those stated in the preceding Article, that shall have preference.

¹⁰¹ Article 190. See Article 517 of the Civil Procedure Act 2000. Also, see Article 931 of the Code of Commerce.

¹⁰² * On this figure, see Royal Decree dated 22nd September 1917 (Madrid Gazette, dated 25th September).

Article 197. The sales referred to in the preceding Article shall be performed at the company deposit, without the need for a judicial decree, in a previously announced public auction, and with intervention of a collegiate Broker, where available, and failing that of a Notary Public.

Article 198. General deposit warehouse companies shall be responsible, in all cases, for the identification and conservation of the goods deposited, subject to the remunerated deposit laws.

SECTION 11^a. Territorial lending companies or banks

Article 199. The following shall be the main operations that pertain to the nature of these companies:

1^a. To grant term loans on real estate property;

2^a. To issue debentures and mortgage bonds.¹⁰³

Article 200. The mortgage loans shall be granted against real estate registered at the Property Registry in the name of the borrower and shall be repaid in annual instalments.¹⁰⁴

Article 201. These companies may not issue debentures or bearer certificates while the privilege now enjoyed by the Mortgage Bank of Spain under the special laws subsists.

Article 202. Notwithstanding the mortgage required under Article 200, loans to provinces and towns, when legally authorised to contract loans within the limit of that authorisation, and provided reimbursement of the capital lent, the interests and expenses thereof are assured by the revenue, rights and capital or surcharges and special taxes.

Another exception is established for State loans, which may also be made on promissory notes from buyers of national goods.

Loans to the State, provinces and towns may be reimbursable within a term of less than five years.

Article 203. Under no circumstance may the loans exceed half the value of the properties upon which the mortgage is to be established.

The bases and forms of valuation of the properties shall be determined precisely on the basis of the articles of association or regulations.

Article 204. The sum of the coupon and thus the repayment of mortgage certificates issued due to the loan shall never be greater than the amount of the average liquid annual revenue produced over a five- year period by the property offered and taken on mortgage to guarantee that loan. The calculation shall always link together the loan, the yield from the property mortgaged and the annual amount of the certifications issued thereon. That annual sum may be, at any time, lower than the annual liquid yield from the respective properties mortgaged to guarantee the loan and to issue the certificates.

Article 205. Should the properties mortgaged decrease in value by 40 per cent, the Bank may request the increase of the mortgage until covering the depreciation or the termination of the contract and the debtor shall decide which of these shall apply.

Article 206. The territorial credit banks may issue mortgage certificates for a sum equal to the total sum of the loans on properties.

They may also issue special debentures for the sum of the loans to the State, provinces and towns.

Article 207. The mortgage certificates and special debentures the preceding Article concerns shall be nominative or to the bearer, with or without repayment, short or long term, with or without premium.

¹⁰³ Article 199. N.2. Act 2/1981 dated 25th March (Official State Gazette 90, dated 15th April), on Regulation of the Mortgage Market.

¹⁰⁴ Article 200. See Article 199.

These certificates or debentures, their coupons and premiums, if they have any, shall be subject to enforcement action under the terms foreseen under the Civil Procedure Act.¹⁰⁵

Article 208. Mortgage certificates and special debentures, like their interest or coupons and the premiums assigned to them, shall have the guarantee, with preference over all other creditors or obligations, credits and loans in favour of the Bank or company that has issued them and on behalf of which they are created, thus being especially and uniquely assigned to payment of those same loans and credits.

Notwithstanding this special guarantee, they shall enjoy the general coverage of the company capital, also preferentially, with regard to this, on the credits resulting from the other operations.

Article 209. The territorial credit Banks may also issue mortgage loans, which may be repaid over a term under five years.

These short-term loans shall be without repayment and shall not allow issue of mortgage debentures or certificates, and they must be issued from capital obtained from realisation of the corporate funds and its profit.

Article 210. The Territorial Lending Banks may receive, with or without interest, capital on deposit, and use half of this to provide advances for a term not exceeding 90 days, as well as on their debentures and mortgage certificates, as well as any other securities received in guarantee by Issuing and Discounting Banks.

On failure to pay by the mutual party, the Bank may request, in keeping with the terms set forth in Article 323, the sale of the certificates or securities pledged.

Article 211. All the combinations of territorial credit, including mutual associations of owners, shall be subject, with regard to issue of debentures and mortgage certificates, to the rules set forth in this Section.

SECTION 12^a. On the special rules for banks and agricultural companies

Article 212. The main activities according to the nature of these companies shall be:

- 1º. To lend in cash or species, for a term that shall not exceed three years, on fruit, crops, cattle or other pledges or special guarantees;
- 2º. To guarantee promissory notes and bills callable within a maximum term of 90 days, to facilitate their discounting or negotiation for the owner or grower;
- 3º. Other operations whose object is to favour ploughing and improvement of the soil, drying out and drainage of land and development of agriculture and other industries related with it.

Article 213. Agricultural Lending Banks or Companies may have agents outside their domicile to answer for the solvency of the owners or colonists who apply for aid from the company, signing the promissory note that is to be discounted or endorsed.

Article 214. The bank guarantee or endorsement provided by these companies or their representatives, or by the agents to whom the preceding Article refers, shall entitle the bearer to claim their payment, by direct, enforceable means, on the maturity date, from any of the parties signing.

Article 215. The promissory notes from the owner or grower, either when kept by the company or negotiated by it, shall have the relevant executive action on expiry, pursuant to the Civil Procedure Act, against the assets of the owner or grower who has signed them.

Article 216. The interest and commission to be received by agricultural lending companies and their agents or representatives shall be stipulated freely within the limits stated by their Articles of Association.

¹⁰⁵ Article 207. See Article 517 of the Civil Procedure Act

Article 217. Agricultural lending companies may not perform the operations referred to in numbers 2 and 3 of Article 212 using more than 50 per cent of their share capital, applying the remaining 50 per cent to the loans set forth in number 1 of the same Article.

SECTION 13^a. On the term and liquidation of business companies^{*106}

Article 218. Partial rescission of the articles of incorporation of a general or limited partnership may take place for any of the following reasons:

- 1º. Due to a partner using the common capital and corporate signature for business on his own account;
- 2º. Do to unauthorised partners interfering in the administrative duties of the company, according to the conditions of the articles of incorporation;
- 3º. Due to fraud being committed by any managing partner in the management or accounting of the company;
- 4º. Due to ceasing to contribute the capital each one stipulated in the articles of incorporation to the common equity account, after having been called on to do so;
- 5º. Due to a partner performing business operations on his own account that are not licit for him according to the provisions of Articles 136, 137 and 138;
- 6º. Due to a partner being absent when bound to perform personal duties at the company if, having been called on to return and fulfil his duties, he does not do so or does not accredit a fair reason that temporarily prevents him from doing so;
- 7º. Due to one or several partners in any other way failing to fulfil the obligations imposed on them in the articles of incorporation.

Article 219. Partial termination of the partnership shall give rise to ineffectiveness of the agreement with regard to the partner responsible, who shall be considered to be excluded from it, requiring him to pay the part of the losses that might be apportioned to him, if any, and the company being authorised to withhold, without granting him any share in the profit or compensation whatsoever, the funds he might have in the equity, until all the operations pending at the time of rescission are completed and liquidated.

Article 220. Until the Business Registry does not effect the entry of the partial rescission of the articles of incorporation, the liability of the partner excluded shall subsist, as well as that of the company, for all the acts and obligations performed in name and on behalf of it, with third parties.

Article 221. Companies of whatever kind shall be fully dissolved for the following reasons:

- 1^a. Expiry of the term originally established in the articles of incorporation, or conclusion of the venture forming their object;
- 2^a. Full loss of the capital;
- 3^a. Opening the liquidation phase of the company declared bankrupt.¹⁰⁷

¹⁰⁶ * See Articles 260 to 281 of the Public Limited Companies Act and 104 to 124 of the Private Limited Companies Act. With regard to registration on the Business Registry of dissolution of Companies, see Articles 238 to 247 of the Business Registry Regulations.

¹⁰⁷ Article 211. See Articles 1,700 to 1,708 of the Spanish Civil Code; 260 to 263 of the Civil Procedure Act; 104 to 108 of the Private Limited Companies Act, and 238 in 247 of the Business Registry Regulations. Cause 3 was amended by Act 22/2003, dated 9th June, on Bankruptcy.

N3. See Article 924 of the Spanish Civil Code.

Article 222. General or limited partnership companies shall also be totally dissolved due to the following causes:

- 1^a. Death of one of the general partners, if the corporate deed does not contain a specific clause on continuation of the company by the heirs of the deceased partner, or the subsistence thereof by the surviving partners;
- 2^a. Dementia or other causes giving rise to incapacitation of a managing partner to manage his own property;
- 3^a. Opening the liquidation phase for bankruptcy of any of the general partners.¹⁰⁸

Article 223. Business companies shall not be understood to be extended by the tacit or presumed will of the partners, after the term for which they were incorporated has expired; and if the partners wish to continue the company, they shall enter into a new agreement, subject to all the formalities specified for the establishment thereof, as provided under Article 119.

Article 224. In general or limited partnership companies formed for a perpetual term, if any of the partners demands the dissolution thereof, the others may not oppose this except in the event of bad faith by the party proposing this.

A partner shall be understood to act in bad faith when, by virtue of the dissolution of the company, he aims to make private profit that he would not have obtained had the company subsisted.¹⁰⁹

Article 225. Partners who leave the company of their own accord or call for the dissolution thereof may not prevent the common interests of the negotiations pending being concluded in the most convenient manner and, until these are concluded, division of the goods and assets of the company shall not be carried out.

Article 226. Dissolution of a business company arising from any other cause apart from termination of the term for which it was incorporated shall not take effect to the detriment of a third party until this is annotated at the Business Registry.¹¹⁰

Article 227. In the liquidation and division of the corporate assets, the rules established in the company's articles of incorporation shall apply and, failing that, those provided in the following Articles.¹¹¹ However, when the company is dissolved under clause 3, foreseen in Articles 221 and 222, the liquidation shall be performed as established in chapter II of title V of the Bankruptcy Act.

Article 228. From the moment at which the company is declared in liquidation, the managing partners shall cease to have representative powers to enter into new contracts and obligations, their powers being limited, as liquidators, to receiving the company credits, to extinguishing the obligations previously contracted, as they come due, and to performing the operations pending.

Article 229. In general or limited partnership companies, should no objection be raised by any of the partners, those who had been in charge of managing the company treasury shall continue to act being in charge of the liquidation; however, if all the partners do not approve this, a General Meeting of Partners shall be called as soon as possible and whatever it resolves shall be complied with, as well as with regard to appointment of liquidators from within or without the company, as well as with regard to the manner and formalities of the liquidation and management of the common funds.

Article 230. Under the penalty of revocation, the liquidators must:

- 1^o. Draw up and notify the partners, within the term of 20 days, of the inventory of the corporate assets, with the balance sheet of the accounts of the company in liquidation, according to its accounting books;
- 2^o. To also notify the partners of the state of liquidation every month.¹¹²

¹⁰⁸ Article 222. Cause 3 has been amended by Act 22/2003, dated 9th July, on Bankruptcy.

¹⁰⁹ Article 224. See Articles 1,705 to 1,707 of the Spanish Civil Code.

¹¹⁰ Article 226. See Article 263 of the Civil Procedure Act.

¹¹¹ Article 277. Amended by Act 22/2003, dated 9th July, on Bankruptcy. See Articles 266 to 281 of the Civil Procedure Act.

¹¹² Article 230. See Articles 272 and 273 of the Public Limited Companies Act.

Article 231. The liquidators shall be held liable to the partners for any damage arising to the common assets due to fraud or gross negligence in performance of their commission, without this implying that they are authorised to perform transactions or enter into commitments concerning the corporate interests, unless the partners have specifically granted them those powers.¹¹³

Article 232. Once the liquidation has been concluded and in at the time of having to proceed to share out the corporate assets, according to the classification made by the liquidators or the General Meeting of Partners, which any of them may require to be held for that purpose, the liquidators themselves shall carry out that division within the term the Meeting shall determine.

Article 233. If any of the partners were to believe himself wronged in the division agreed, he may avail himself of his right before the competent Judge or Court of Law.¹¹⁴

Article 234. In liquidation of business companies in which a minor or incapacitated person has an interest, their father, mother or guardian shall act for them, as appropriate, with full powers as if acting in his own business, and all the acts such a representative may grant or consent to on behalf of the person he represents shall be valid and irrevocable, without the benefit of restitution, notwithstanding the liabilities the person acting on behalf of the minor or incapacitated may contract on behalf in relation to the latter if he acts with malicious intent or negligence.

Article 235. No partner may demand delivery of the assets to which he is entitled in division of the equity until all the debts and obligations of the company are extinguished or until their sum is deposited, if delivery cannot be performed immediately.¹¹⁵

Article 236. The first distributions made to the partners shall be subject to deduction of the moneys they may have received for their personal expenses, or those advanced to them by the company for any other purpose.

Article 237. The private assets of the general partners that were not included in the company assets when it is formed may not be seized to pay the obligations contracted by the latter, except after having attempting payment from the corporate assets.

Article 238.¹¹⁶ (...)

¹¹³ Article 231. See Article 279 of the Public Limited Companies Act.

¹¹⁴ Article 233. See Article 215 of the Public Limited Companies Act.

¹¹⁵ Article 235. See Article 276 of the Public Limited Companies Act.

¹¹⁶ Article 238. Repealed by Act 19/1989, dated 25th July, on partial reform and adaptation to EEC Directives of company legislation (Official State Gazette number 178, 27th July).

TITLE II

On silent partnerships^{*117}

Article 239. Businesspersons may participate in operations by other businesspersons, contributing to them with a part of the capital they may agree, thus becoming partners in the profits or losses according to the proportion determined.

Article 240. Silent partnerships shall not be subject to any formality to establish them, and they may be entered into privately verbally or in writing, their existence being proven by any of the means recognised in law, according to the terms set forth in Article 51.

Article 241. In the negotiations the preceding two Articles concern, a common trade name for all the partners may not be adopted nor more direct credit than that of the businessperson performing and managing such negotiations in his name may be used, and always under his individual liability.

Article 242. Those entering into contracts with the businessperson in whose name the business is carried out, shall only be entitled to take action against him, and not against the other parties concerned, who shall not be entitled to take action against the third party who entered into a contract with the manager either, unless he formally assigns his rights to them.

Article 243. The liquidation shall be carried out by the manager who, on conclusion of the operations, shall duly render accounts of the results obtained.

TITLE III

On business agencies^{*118}

SECTION ONE. On business agents

Article 244. A mandate shall be considered a business agency when the object thereof is a business act or operation and a businessperson or commercial intermediary is the principal or agent.

Article 245. The agent may perform the agency by contracting in his own name or in that of his principal.

Article 246. When the agent contracts in his own name, he shall not need to declare who the principal is and shall be bound directly, as if it were his own business, to the persons with whom he enters into contracts, who shall not be able to take action against the principal, nor he against these, always notwithstanding the respective entitlements of the principal and agent between each other.

Article 247. If the agent enters into a contract in the name of the principal, he must declare this and if the contract is in writing, state this in same or in the recitals, declaring the name, surname and address of that principal.

¹¹⁷ * See Royal Legislative Decree 1/1993 dated 24th September, that approves the Consolidated Text of the Act on Tax on Property Conveyance and Stamp Duty (Official State Gazette number 251 dated 20th October), Article 22 of which determines, with regard to taxation of Corporate Operations, that "For the purposes of this Tax, the following shall be comparable to companies: (...) 2. Silent partnership agreements."

¹¹⁸ * See Articles 1,709 to 1,739 of the Spanish Civil Code, as well as Act 12/1992 dated 27th May, on agency contracts. Also Royal Decree 3,595/1977 dated 30th December (Official State Gazette number 37 dated 13th February), amended by Royal Decree 3,028/1978 (Official State Gazette number 306 dated 23rd December), that approves the General Statute of Associations of Commercial Agents.

Also see Articles 1, 3 f and 2, 1 f of the Workers' Statute, the Consolidated Text of which has been approved by Royal Legislative Decree 1/1995 dated 24th March (Official State Gazette number 75 dated 29th March); Royal Decree 1/438/1985 dated 1st August (Official State Gazette on 15th August), on special status labour relations.

In the case specified in the preceding paragraph, the contract and actions arising from it shall take effect between the principal and the person or persons entering into the contract with the agent; but he shall be bound to the persons with whom he entered into the contract while the agency is not proven, if the principal were to deny it, notwithstanding the obligation and respective actions between the principal and the agent.

Article 248. Should an agent reject the agency he is given, he shall be bound to notify the principal of this by the fastest possible means, and must confirm this, in all cases, by the soonest mail to the day on which he received the agency.

He shall also be required to provide due diligence in the custody and conservation of the goods the principal has sent him, until he appoints a new agent, in view of his refusal, or until, without awaiting a new appointment, the Court or Tribunal has taken charge of the goods, at the request of the agent.

Failure to fulfil any of the obligations established in the preceding two paragraphs shall give rise to the agent being liable to compensate the damages and losses this may cause the principal.¹¹⁹

Article 249. The agency shall be understood to be accepted whenever the agent performs any formality to perform the agency that the principal has entrusted him with that is not limited to that specified in paragraph two of the preceding Article.

Article 250. An agent shall not be required to carry out an agency requiring funds to be advanced, although he may have been accepted it, until the principal does not make the moneys necessary for that purpose available to the agent.

The agent may also suspend the duties he is commissioned when, having invested the moneys received, the principal refuses to send the further funds he may request.

Article 251. When it is agreed to advance funds to perform the agency, the agent shall be obliged to supplement them, except in the event of receivership or bankruptcy of the principal.

Article 252. The agent who, without a legal reason, does not fulfil the agency accepted or that he has begun to perform, shall be held liable for all the damages arising to the principal therefrom.

Article 253. When a contract is entered into by the agent with all the legal formalities, the principal must accept all the consequences of the agency, notwithstanding his right to redress against the agent for failures or omissions committed while fulfilling it.

Article 254. Agents who perform their agency according to instructions received from the principal shall be exonerated of all liability with reference to the latter.

Article 255. In all matters not foreseen and specifically stated by the principal, the agent must consult him, whenever the nature of the business so permits.

However, if authorised to act at his discretion, or if consultation is not possible, he shall do what caution recommends and whatever is most in keeping with business practice, caring for the business as if it were his own. In the event of an unforeseen accident making implementation of the instructions received risky or damaging in the opinion of the agent, he may suspend fulfilment of the agency, notifying the principal, by the fastest possible means, of the reasons that have caused him to do so.

Article 256. Under no circumstances whatsoever may the agent proceed in breach of the specific instructions of the principal, being held liable for all the damages and losses caused to him by doing so.

The agent shall be held equally liable in cases of malice or abandonment.

Article 257. The agent shall bear the risks of the moneys he has in his possession due to the agency.

Article 258. Agents who, without specific permission by the principal, arrange an operation at prices or conditions that are more onerous to the current ones on the market on the date when performed, shall be held liable to the

¹¹⁹ Article 248. See Article 2,119 of the Civil Procedure Act.

principal for the damages this may have caused the principal, without it being a valid excuse to allege that he was performing operations on his own account at the same time and subject to the same conditions.

Article 259. The agent must comply with the terms established in the Laws and Regulations with regard to the negotiation entrusted, and shall be responsible for the results of their breach or omission. If he has proceeded according to the specific orders by the principal, the appropriate liabilities shall affect both.

Article 260. The agent shall frequently provide the principal news of his interest for proper success of the negotiation, informing him by mail on the same day, or the one following that of the contracts entered into.

Article 261. The agent shall perform the agencies received himself and may not delegate them without prior consent by the principal, unless he is previously authorised to delegate; although he may, under his responsibility, assign to his employees to the ancillary tasks they are normally entrusted with according to general business practice.

Article 262. If the agent has effected delegation or substitution with authorisation from the principal, he shall be held liable for the management by the substitute, if the person upon whom he is to delegate is left to his choice, if not, he shall not be responsible.

Article 263. The agent shall be bound to render specific, justified accounts, in relation to his books, of the moneys received in commission, reimbursing the principal the surplus in his favour, in the term and manner specified for him to do so.

In case of late payment, he shall pay interest at the legally established rate.

The principal shall bear the expense of lost and missing surplus funds, provided the agent has observed the instructions in that regard concerning return.¹²⁰

Article 264. The agent who, having received funds to perform an agency, invests or uses them in a purpose other than the agency, shall pay the principal the capital and its legal interest and shall be held liable from the day he received them, for the damages and losses arising due to having ceased to fulfil the agency, notwithstanding any criminal action that might be appropriate.¹²¹

Article 265. The agent shall respond for the stocks and merchandise received, under the terms and conditions and with the qualities he is instructed for the batch concerned, unless he places on record, on taking charge of them, the breakages and deterioration that might arise, comparing their state to that recorded in the bills of carriage or charter, or the instructions received from the principal.

Article 266. The agent who holds merchandise or stocks for others shall be held liable for their conservation in the state in which he received them. That liability shall cease when destruction or deterioration is due to fortuitous events, act of God or force majeure, time elapsing or flaw inherent to the item concerned.

In cases of partial or total loss due to time elapsing or flaw inherent to the item, the agent shall be obliged to legally accredit the deterioration of the merchandise, notifying the principal as soon as this comes to his attention.

Article 267. No agent may purchase what he has been ordered to sell for himself or others, nor shall sell what he has been charged with buying, without permission from the principal.

Nor may he alter the brands of the items he has bought or sold for others.

Article 268. Agents may not have goods of a same kind belonging to different owners, under the same brand, without distinguishing them by a counter-mark to avoid confusion, and defining the respective property of each principal.

¹²⁰ Article 263. Pursuant to the terms set forth in Article 1 of Act 24/1984 dated 29th June, the legal interest on money is established, since 31 December 1999, at 4.25 per cent (5th Additional Provision of Act 49/1998, dated 30th December, on General State Budgets for 1999 (Official State Gazette number 313 of 31st December).

¹²¹ Article 264. See Articles 252 and 253 of the Criminal Code dated 23rd November 1995.

Article 269. If any alteration were to arise in the items entrusted to a agent that were to make its sale urgent to save the possible remaining part of its value, and if the urgency were such that there were no time to notify the principal and abide by his orders, the agent shall appear before the competent Judge or Court of Law that shall authorise the sale with the solemnities or precautions deemed most beneficial to the principal.¹²²

Article 270. The agent may not, without permission from the principal, lend, or sell without immediate payment or by instalment, in which case the principal may require him to pay in cash, leaving any interest, profit or advantage arising from that term credit in favour of the agent.

Article 271. If the agent were to sell by instalment, with due authorisation, he must state this on the account or notifications he submits to the principal, informing him of the names of the buyers and, if he does not do this, it shall be understood, with regard to the principal, that the sales were against cash.

Article 272. If the agent were to receive another additional sum known as guarantee, in addition to the ordinary agency, he shall bear the risks of collection on his account, being obliged to pay the principal the product of the sale of these under the same terms agreed by the buyer.

Article 273. An agent who does not verify the collection of the credits for his principal at the moments when they are callable shall be held liable for the damage caused by his omission or delay, unless he accredits that he appropriately used the legal means to obtain payment.

Article 274. The agent in charge of sending goods, who receives an order to insure them, shall be held liable, if he does not do so, for the damage they may suffer, provided the necessary provision of funds had been made to pay the insurance premium, or if he were bound to advance them and ceases to give immediate notice to the principal, that it is impossible to take such an insurance out.

If the insurer were to be declared bankrupt, the agent shall be obliged to arrange a new insurance contract, except if the principal has notified him otherwise.¹²³

Article 275. The agent who, as such, must send goods to another location, must hire the transport, fulfilling the obligations established by the transport company for carriage by land and sea.

Were he were to hire the carriage in his own name, although doing so on behalf of others, he shall be subject to all the obligations with the carrier that are imposed on transport companies for carriage by land and sea.¹²⁴

Article 276. Goods dispatched on consignment shall be understood to be especially encumbered for payment of agency fees, advances and the expenses of the agent may have borne on account of their value and product.

As a consequence of this obligation:

- 1º. No agent may be dispossessed of the goods he has received on consignment without previously being reimbursed the moneys advanced, expenses and agency fees;
- 2º. On account of the product of the same goods, the agent must be paid, with preference over all other creditors of the principal, except as provided in Article 375.

In order to enjoy the preference consigned in this Article, it shall be a necessary condition for the goods to be in the possession of the consignee or agent, or for them to be available to him at a public depot or warehouse, or for their consignment to have been performed, dispatched in his name, having received the bill of lading, receipt or letter of transport signed by the person in charge of checking this.

Article 277. The principal shall be obliged to pay the agent the agency premium, except in the case of agreement to the contrary.

¹²² Article 269. See Article 2,161 of the Civil Procedure Act and consider that the principles quoted refer to the Code of Commerce of 1829.

¹²³ Article 274. Amended by Act 22/2003, dated 9th July, on Bankruptcy.

¹²⁴ Article 275. See Articles 278 and 379 of the Code of Commerce.

Should there be no clause stating the quota, this shall be set according to the business custom and practice in the location where the agency is fulfilled.

Article 278. The principal shall also be bound to pay the agent cash, through a justified account, to settle the sum of all his expenses and disbursements, with the legal interest from the date on which they are expended, until they are fully reimbursed.

Article 279. The principal may revoke the agency granted to the agent, at any state of the transaction, notifying him, but always being bound by the results of the formalities performed before having notified him of that revocation.

Article 280. The contract shall be terminated on the death or incapacity of the agent. However, it shall not be terminated by the death or incapacity of the principal, although it may be revoked by his representatives.

SECTION 2^a. On other forms of business mandate.

*Factors, employees and assistants.*¹²⁵

Article 281. The businessperson may appoint general or individual proxies or agents to engage in business in his name and on his account, fully or partially, or for them to assist him in the business.

Article 282. The factor must have the necessary capacity to bind himself according to this Code and with powers conferred by the person on behalf of whom he is performing the business.

Article 283. The manager of a company or factory or business venture, employed and authorised to manage, direct it and to enter into contracts concerning its business, with more or less powers, as deemed convenient by the owner, shall have the legal status of a factor, and the provisions set forth in this Section shall be applicable to him.

Article 284. The factors shall negotiate and enter into contracts on behalf of their principals, and on all the documents they sign in that capacity, they shall state that they are doing so with powers or on behalf of the person or company they represent.

Article 285. If factors enter into contracts under the terms set forth in the preceding Article, the principals shall bear all the obligations they may contract.

Any claim to compel them to fulfil shall be enforced on the assets of the principal, establishment or company, and not those of the factor, unless there is confusion with the former.

Article 286. Contracts entered into by the factor of an establishment or factory or business venture, when notoriously belonging to a known firm or company, shall be understood to be conducted on account of the owner of that firm or company, even when the factor has not stated this at the time of entering into these, or if abuse of confidence, transgression of powers or appropriation by the factor of the goods subject to contract is alleged, provided these contracts concern objects encompassed by the business and trading activities of the establishment, or if, even being of another nature, it turns out that the factor acted under orders from his principal, or that he approved his management under specific terms or by positive acts.

Article 287. Contracts entered into by a factor in his own name shall be directly binding for him before the person with whom he has entered into such; however, if the negotiation was conducted on behalf of the principal, the other party to the contract may take action against the factor or against the principal.

Article 288. Factors may not deal on their own behalf, nor take an interest on their own behalf or that of others in negotiations of the same kind as performed on behalf of their principals, unless these specifically authorise them to do so.

¹²⁵ * See Royal Legislative Decree dated 24th March 1995, that approves the Consolidated Text of the Workers' Statute, principally Articles 1 and 2.

If they negotiate without that authorisation, the profit from the negotiation shall be for the principal and the losses shall be borne by the factor.

If the principal has granted the factor authorisation to deal on his account, or in partnership with other persons, he shall not be entitled to the profits, or share in the losses suffered.

If the principal has provided the factor a share in any operation, the share he has in the profit shall be, except for agreement to the contrary, proportional to the capital he provides; and if no capital is contributed, he shall be considered a working partner.

Article 289. Fines the factor may attract due to breaches of the Tax Laws or Regulations of the Public Administration in the duties of his management shall be settled against the goods he administers, notwithstanding the right of the principal to act against the factor due to his responsibility in the events giving rise to the fine.

Article 290. The powers granted to a factor shall be deemed to subsist while they are not specifically revoked, notwithstanding death of the principal or the person from whom they might have been duly received.¹²⁶

Article 291. The acts effected and contracts entered into by the factor shall be valid with regard to their mandator, provided they are prior to the moment when notice is served by the latter, by a legitimate means, of revocation of the powers or of disposal of the establishment.

They shall also be valid with regard to third parties while the terms of number 6 of Article 21 are not fulfilled with regard to revocation of the powers.

Article 292. Businesspersons may entrust other persons, apart from factors, the performance of a specific or a series of formalities of the business they perform, in a constant manner, in their name and on their behalf, by virtue of a written or verbal arrangement; recording this in the Regulations of their companies, and notifying private individuals by public announcements or by means of circulars to their correspondents.

The acts by these individual employees or proxies shall not be binding on their principal except in operations inherent to the branch in which they are specifically instructed to act.

Article 293. The provisions of the preceding Article shall also be applicable to trade assistants who are authorised to manage a business transaction, or any part of the business and trading activities by their principal.

Article 294. The assistants in charge of retail selling in a public store shall be considered authorised to collect the price of the sales they perform, and their receipts shall be valid, issuing these on behalf of their principals.

Assistants selling at wholesale stores shall have the same power, provided the sales are cash and the payment is taken at the actual store; but when collection is to take place elsewhere, or is from instalment sales, the receipts must be signed by the principal or his factor, or by the proxy legitimately appointed to collect.

Article 295. When a businessperson entrusts his assistant the reception of merchandise and when he receives them without objection as to their quantity or quality, their reception shall take the same effect as if performed by the principal.¹²⁷

Article 296. Without the consent of their principals, neither the trade factors nor the assistants may delegate the agencies they receive from the former in favour of others; and should they do so without that consent, they shall be held directly liable for the management by the substitutes and the obligations undertaken by them.

Article 297. Trade factors and assistants shall be held liable to their principals for any damage they may cause to their interests, due to have proceeded with malice, negligence or breach of the orders or instructions they may have received in performance of their duties.

¹²⁶ Article 290. See Article 87.2 of the Business Registry Regulations.

¹²⁷ Article 295. See Article 336 and 342 of this Code.

Article 298. If, due to the effect of the service provided, a trade assistant were to make any extraordinary expenditure, or were to suffer any loss, there not having been any specific agreement thereon between him and his principal, the latter must compensate him for the loss suffered.

Article 299. If the contract between businesspersons and their assistants and employees is established for a set term, neither of the parties to the contract may cease fulfilment thereof without the consent of the other, until the end of the term agreed.

Those breaching this clause shall be required to compensate the damages and losses, except for what is set forth in the following Articles.¹²⁸

Article 300. The following shall be special causes for businesspersons to be able to dismiss their employees, even though the term of employment may not have expired:

- 1^a. Fraud or abuse of confidence in the duties they are entrusted;
- 2^a. Performing any business negotiation on their own account, without the specific knowledge and permission of the principal;
- 3^a. Severely lacking in due respect and consideration due to the latter or to his family members or dependents.

Article 301. The following shall be causes for employees to resign from their principals, although the term of employment may not have expired:

- 1.^a Failure to pay the wage or salaries agreed on time;
- 2.^a Failure to fulfil any of the other conditions arranged to benefit the employee;
- 3.^a Abuse or severe offence by the principal.

Article 302. In cases in which performance of the agency does not have a set term, either of the parties may consider it to have expired, notifying the other one month in advance.

The factor or assistant shall be entitled, in that case, to the wage due for that month.

TITLE IV

On business deposits^{*129}

Article 303. In order for the deposit to be of a business nature, the following conditions are required:

- 1.^o For the depositary, at least, to be a businessperson;
- 2.^o For the items deposited to be traded goods;
- 3.^o For the deposit, in itself, to constitute a business operation, or for it to be performed due to or as a consequence of business operations.

Article 304. The depositary shall be entitled to require remuneration for the deposit, if no specific clause to the contrary exists.

¹²⁸ Article 299. Consider Articles 49 and following of the Workers' Statute, the Consolidated Text of which has been approved by Royal Legislative Decree 1/1995, dated 24th March (Official State Gazette number 75 dated 29th March).

¹²⁹ * Articles 1,758 and following of the Spanish Civil Code. In addition, Act 40/2002, dated 14th November, which regulates vehicle-parking contracts (Official State Gazette number 274, dated 15th November).

If the parties to the contract have not set a remuneration quota, it shall be regulated according to the practice in the location where the deposit is established.

Article 305. The deposit shall be constituted by delivery, to the depositary, of the item that constitutes its object.

Article 306. The depositary is obliged to conserve the item subject to deposit as he receives it and to return it with the increases thereof, if any, when the depositor so requests.

In conservation of the deposit, the depositary shall be held liable for detriment, damage and losses suffered by the goods deposited due to his malice or negligence, and also those arising from the nature or flaw of the goods, if in these cases he did not do whatever was necessary to avoid or remedy them, also notifying the depositor of these as soon as they became apparent.¹³⁰

Article 307. When deposits are of cash, specifying the coinage in which they are constituted, or when delivered sealed or closed, the increases or decreases their value may undergo shall be on the account of the depositor.

The risks of those deposits shall be borne by the depositary, who shall bear the damage suffered, unless it is proven that they were due to force majeure or act of God or an unavoidable fortuitous event.

When cash deposits are constituted without specifying the coinage, either sealed or unsealed, the depositary shall be held liable for their conservation and risks under the terms established in paragraph two of Article 306.

Article 308. Depositaries of titles, securities, bills or documents that accrue interest, shall be obliged to collect these on their maturity dates, as well as to perform all necessary acts to ensure the documents deposited conserve the value and rights to which they are entitled according to the legal provisions.

Article 309. Provided, with the consent of the depositor, the depositary of the goods subject to deposit disposes of these, either for himself or his business, or for the operations he is entrusted, the rights and obligations inherent to depositor and depositary shall cease, and the rules and provisions applicable to business loans or agencies or the contract in substitution of the deposit into which they may have entered, shall apply.

Article 310. Notwithstanding what is set forth in the following Articles, deposits made at banks, at general warehouses, at lending institutions or any other companies, shall be governed firstly by their Articles of Association, secondly by the specifications of this Code and, lastly, by the rules of Civil Law that are applicable to all deposits.¹³¹

TITLE V

On business loans^{*132}

SECTION ONE. On business loans

Article 311. The loan shall be considered as having a business nature when the following circumstances occur:

- 1.^a If any of the parties to the contract is a businessperson;
- 2.^a If the items lent are assigned to trading activities.

Article 312. When the loan consists of money, the debtor shall pay by returning a sum equal to that received, according to the legal value of money the currency has at the time of return, except if there as an agreement over

¹³⁰ Article 306. See Articles 524.2 and 535 of the Criminal Code.

¹³¹ Article 310. See Articles 1,758 and following of the Spanish Civil Code.

¹³² * Articles 1,740 to 1,757 of the Spanish Civil Code.

the kind of currency in which the payment is to be made, in which case the alteration its value has undergone shall be to the detriment or benefit of the lender.

In loans of titles or securities, the debtor shall pay by returning as many of the same kind and under identical conditions, or their equivalents, if those have been extinguished, except agreement to the contrary.

If the loans are in species, the debtor must return, if there is no agreement otherwise, an equal sum of the same species and quality, or its equivalent in cash, if the species owed no longer exists.

Article 313. In loans for an indefinite time, or without a set term of expiry, the debtor may not be required to pay, except when 30 days have elapsed, from the date of notarial demand is served on him.

Article 314. Loans shall not accrue interest if this has not been agreed in writing.

Article 315. Interest on a loan may be agreed without any limitation whatsoever as to the rate or of any other kind. Anything to be rendered to the creditor shall be deemed to be interest.

Article 316. Debtors who delay payment of their debts after they mature must settle the interest agreed for this event as of the day following maturity or, failing that, pay the legal interest.

If the loan were to be in species, in order to calculate the yield, their value shall be evaluated at the prices of the merchandise provided in the location where the return is to take place, on the day following maturity, or that determined by appraisers, if the merchandise has expired at the time of its valuation being performed.

And if the loan were to consist of titles or securities, the yield for delay shall be that those same securities or titles accrue or, failing that, the legal amount, setting the price of the securities according to that they have on the Stock Exchange, if listed, or in the city, if otherwise, on the day following their maturity.¹³³

Article 317. Interest due and not paid shall not accrue interest. The parties to the contract may, however, capitalise the liquid interest that is not paid that, as an increase in capital, shall accrue further yield.

Article 318. Receipt of the capital by the creditor, without specifically reserving the right to the interest agreed or owed, shall extinguish the obligation the debtor has with regard to such interest.

Deliveries to account, when their application is not specific, shall be assigned firstly to payment of interest by order of maturity and then to the capital.

Article 319. Once a lawsuit has been filed, no accumulation of interest on capital may be performed to demand greater yields.

SECTION 2^a On loans guaranteed by securities* ¹³⁴

Article 320. Loans guaranteed by securities admitted to trading on an official secondary market, set forth in a policy with the intervention by a Collegiate Stock Broker or in a public deed, shall always be considered as having a business nature.

Pursuant to the provisions of this Section, the lender shall have the right to collect his loan upon the securities pledged, with preference over the other creditors, who may not dispose of them unless they pay the loan constituted upon them.¹³⁵

¹³³ Article 316. Pursuant to the provisions of Article 1 of Act 24/1984 dated 29th June, the legal interest of money is established, from 31st December 1999, at 4.25 per cent (5th Additional Provision of Act 49/1998 dated 30th December, on General State Budget for 1999; Official State Gazette number 313, dated 31st December).

¹³⁴ * Drafted pursuant to 4th Additional Provision of the Stock Market Act, dated 28th July 1988 (Official State Gazette number 181, dated 29th July).

¹³⁵ Article 320. See Article 918 of this Code. Also see 6th Additional Provision of Act 37/1998 dated 16th November, on reform of Act 24/1988, dated 28th July on the Stock Market (Official State Gazette number 275, dated 17th November).

Article 321. The contractual policy must state the necessary data and circumstances for the adequate identification of the securities given in guarantee.¹³⁶

Article 322. Once the term of the loan has matured, the creditor, except agreement to the contrary and without the need to demand the debtor, shall be authorised to require disposal of the securities given as collateral, to which end he shall deliver the governing bodies of the relevant secondary market the policy or deed of the loan, accompanied by the titles pledged or certificate to accredit registration of the guarantee, issued by the body in charge of the relevant account entry.

Once the governing body has performed the appropriate checking, it shall adopt the necessary measures to dispose of the securities pledged, on the same day it receives the notification from the creditor or, if not possible, on the following day, through a member of the relevant official secondary market.

The secured creditor may only make use of the special enforcement procedure regulated in this Article during the three working days following expiry of the loan.

Article 323. What is set forth in this Section shall also be applicable to credit current accounts open at lending institutions when it has been agreed that the sum callable in the event of enforcement shall be that specified in the certification issued by the creditor entity, in which case, in addition to the documents considered in the preceding Article, that certification shall be delivered accompanied by the authentic document to which Article 1,435 of the Civil Procedure Act refers.

Article 324. The securities pledged as established in the preceding Articles shall not be subject to claim while the lender is not repaid, notwithstanding the rights and actions of the principal party dispossessed against the persons responsible for the securities granted as collateral.

TITLE VI

On business sales-purchases and exchanges and assignments of non-endorsable credits.

SECTION ONE. On sale-purchase^{*137}

Article 325. The sale-purchase of moveable goods for resale, either in the same format as bought, or as another item, in order to make a profit from the resale, shall be considered as having a business nature.

Article 326. The following shall not be considered as having a business nature:

- 1.º Purchases of items intended for consumption by the buyer, or by the person under whose agency they are acquired;
- 2.º Sales by owners and agricultural workers or farmers of the fruit or product of their crops or cattle, or of the species in which they are paid the rents;
- 3.º Sales of objects built or manufactured by craftsmen that they perform at their workshops;
- 4.º Resale by any non-businessperson of the rest of the stock obtained for consumption.¹³⁸

¹³⁶ Article 321. See Article 107 of this Code.

¹³⁷ * See Articles 1,445 to 1,525 of the Spanish Civil Code. Also see Act 28/1998 dated 13th July, on Instalment Sale of Moveable Assets (Official State Gazette number 167 dated 14th July); United Nations Convention on Contracts for the Sale of Goods, signed at Vienna on 11th April 1980 (Official State Gazette number 26, dated 30th January 1991), and Act 23/2003 dated 10th July, on Guarantees on Sale of Consumer Goods (Official State Gazette number 165, dated 11th July).

¹³⁸ Article 326. N.3. Consider Royal Decree 1,520/1982 dated 18th June (Official State Gazette on 14th July), on Regulation of Crafts. See Article 130.1 of the Constitution.

Article 327. If the sale concerns samples or a specific quality known to the trade, the buyer may not refuse receipt of the contractual goods, if they are pursuant to the samples or quality set in the contract.

Should the buyer refuse to receive them, appraisers shall be appointed for each party, who shall decide whether the goods are fit to be received or not.

If they appraisers decide they are fit to be received, the sale shall be deemed to have concluded, and on the contrary, the contract shall be cancelled, notwithstanding the compensation to which the buyer may be entitled.¹³⁹

Article 328. In purchases of goods that are not visible, or that are not on display, nor may be classified according to a specific quality known to the trade, it shall be understood that the buyer reserves the right to examine them and freely cancel the contract if the goods are not convenient to him.

The buyer shall also be entitled to cancellation if there is a specific clause reserving the right to try out the contractual goods.

Article 329. If the seller does not deliver the goods sold within the term stipulated, the buyer may demand fulfilment or cancellation of the contract, with compensation, in either case, for the damages that may have been caused by the delay.

Article 330. In contracts in which delivery of a specific amount of merchandise within a set term is agreed, the buyer shall not be obliged to receive a part, even under promise to deliver the rest; however, if he were to accept partial delivery, the sale shall have been completed with regard to the goods received, notwithstanding the right the buyer has to request fulfilment of the contract or its cancellation with regard to the rest, pursuant to the preceding Article.

Article 331. Loss or deterioration of the goods before their delivery, due to unforeseen accident, or without the seller being to blame, shall entitle the buyer to cancel the contract, unless the seller has set himself as the depositary of the merchandise pursuant to Article 339, in which case his obligation shall be limited to that of the terms of deposit.

Article 332. If the buyer were to refuse receipt of the goods bought without a proper reason, the seller may demand fulfilment or cancellation of the contract, depositing the merchandise before the Court in the former case.

The same judicial deposit may be established by the seller, should the buyer delay taking charge of his merchandise.

The expenses arising from deposit shall be borne by the party giving rise to having to constitute it.

Article 333. Damages and losses caused to the merchandise once the contract has been concluded and with the seller having the goods available to the buyer at the place and time agreed, shall be borne by the buyer, except in the event of malice or negligence by the seller.

Article 334. Damages and losses suffered by the merchandise, even due to fortuitous reasons, shall be borne by the seller in the following cases:

- 1.º If the sale is performed by number, weight or measurement, or if the item sold is not certain and determined, with the marks and signs to identify it;
- 2.º If due to a specific agreement, or due to business practice, according to the nature of the item sold, the buyer is able to check and examine it beforehand;
- 3.º If the contract has the condition of not performing delivery until the item sold has fulfilled the conditions stipulated.

Article 335. If the items sold perish or deteriorate when in the custody of the seller, he shall return the buyer the part of the price he may have received.

Article 336. The buyer who examines the content of the goods at the time of receipt shall not be entitled to take action against the seller alleging flaw or defect in the quantity or quality of the merchandise.

¹³⁹ Article 327. On the way to record the state of goods, see Article 2,127 of the Civil Procedure Act of 1881.

The buyer shall be entitled to repeat action against the seller due to defect in quantity or quality of the merchandise received in packaging or wrapped, provided he takes that action within four days following receipt and the breakage is not due to a fortuitous event, flaw inherent to the item, or malicious intent.

In these cases, the buyer may opt to cancel the contract or to fulfil it according to the terms agreed, but always with compensation of the damages that may have been caused by the defects or flaws.

The seller may avoid this claim by demanding, at the act of delivery, for these to be checked, with regard to quantity and quality, to the satisfaction of the buyer.

Article 337. If the term for delivery of the merchandise sold has not been stipulated, the seller must have them available to the buyer within the twenty-four hours following the contract.

Article 338. The expenses of delivery of the goods in business sales shall be charged to the seller until they are made placed, weighed or measured and are available to the buyer, unless there is a specific clause to the contrary.

Those of their receipt and extraction beyond the place of delivery shall be borne by the buyer.

Article 339. Once the merchandise sold is made available to the buyer to his satisfaction, or it is subject to judicial deposit in the case foreseen in Article 332, the term shall begin for the buyer to pay the cash price or the instalments agreed with the seller.

He shall set himself up as depositary of the goods sold and shall be bound to custody and conserve them according to the deposit laws.

Article 340. While the goods sold are in the possession of the seller, even though as a deposit, he shall have preference over them over any other creditor, to obtain payment of the price, with the interest caused by the delay.

Article 341. Delay in paying the price of the item purchased shall imply the buyer has the obligation to pay the legal interest on the moneys owed to the seller.¹⁴⁰

Article 342. The buyer who has not made any complaint whatsoever based on internal flaws of the item sold, within the 30 days following its delivery, shall lose all entitlement to action and right of repetition against the seller for that cause.

Article 343. The moneys delivered as a deposit on the price of business sales shall always be considered to be delivered on account of the price and in evidence of ratification of the contract, except if there is a clause to the contrary.

Article 344. Business sales shall not be cancelled due to detriment; but damages and losses shall be compensated by the party that has proceeded with malice or fraud in the contract or the fulfilment thereof, notwithstanding criminal action.

Article 345. In all business sales, the seller shall be obliged to ensure the buyer is not deprived of the possession of the goods purchased and to correct any defects found therein, except if there is a clause to the contrary.¹⁴¹

SECTION 2^a On exchanges *¹⁴²

Article 346. Exchanges of a business nature shall be governed by the same rules as specified in this Title with regard to purchases and sales, when applicable to the circumstances and conditions of those contracts.

¹⁴⁰ Article 341. See Act 24/1984 dated 29th June (Official State Gazette number 158, dated 3rd July), on amendment of the legal interest rate, that establishes:

“Article 1. The legal interest shall be determined by applying the basic rate of the Bank of Spain in force on the day when its accrual commences, except if the General State Budgets Act establishes otherwise.

Article 2. Whatever the nature of the act or contract from which the obligation arises, the interest that, except for stipulation to the contrary, must be paid by the legitimately established debtor, and in the other cases in which it is callable pursuant to the terms established in the preceding Article.”

¹⁴¹ Article 345. See Articles 1,473 and following of the Spanish Civil Code.

¹⁴² * See Articles 1,538 to 1,541 of the Spanish Civil Code.

SECTION 3^a Assignment of non– endorsable credits*^{*143}

Article 347. Business credits that may not be endorsed even to the bearer may be assigned by the creditor without the need for consent by the debtor, for which it shall suffice to notify him of the transfer.

The debtor shall be bound to the new creditor by virtue of the notification, and from when this takes place, payment other than that to said party shall not be considered legitimate.

Article 348. The assignor shall be held liable for the legitimacy of the credit and the status under which the assignment was performed; but not for the solvency of the debtor, unless there is a specific clause declaring this.

TITLE VII

On business land transport contracts¹⁴⁴

Article 349 to 379.¹⁴⁵ (Repealed)

TITLE VIII

On insurance contracts*^{*146}

TITLE IX

On business guarantees*^{*147}

Article 439. All guarantees intended to assure fulfilment of a business contract shall be considered as having a business nature, even when the guarantor is not a businessperson.

Article 440. Business guarantees must be recorded in writing, without which they shall have no value or effect.

Article 441. Business guarantees shall be free of charge, except for agreement to the contrary.

Article 442. In indefinite contracts, when remuneration for the guarantor is agreed, the guarantee shall subsist until, due to full completion of the main contract guaranteed, the obligations arising from it are finally cancelled, whatever their duration, unless a term for the guarantee has been established by specific clause.

¹⁴³ ** See Articles 1,526 to 1,536 of the Spanish Civil Code.

¹⁴⁴ Title repealed by sole repealing provision of Act 15/2009 dated 11st November

¹⁴⁵ Repealed by sole repealing provision of Act 15/2009 dated 11st November

¹⁴⁶ * Title repealed by Act 50/1980 dated 8th October, on insurance contracts, that is fully reproduced in this same volume.

¹⁴⁷ * See Articles 1,822 to 1,856 of the Spanish Civil Code.

TITLE X

On the contract and bills of exchange**¹⁴⁸

TITLE XI

On acquittals, coupons and promissory notes to order and payment orders called cheques

TITLE XII

On bearer securities and forgery, robbery, theft or loss of these

SECTION ONE. On bearer securities

Article 544. All the securities to order mentioned in the preceding Title may be issued to the bearer and shall bear, like those, related enforcement action from their maturity date, with no further requisite than recognition of the signature of the person responsible for their payment.

The maturity date shall be counted according to the rules established for the securities issued to order, and no exceptions shall be allowed against the enforcement action other than those indicated in Article 523.¹⁴⁹

Article 545. Bearer securities shall be transmissible by delivery of the document. Titles whose possession is acquired by a third party in good faith and without gross negligence cannot be claimed. The rights and actions of the legitimate owner against those responsible for the acts that deprived him of his property remain intact.¹⁵⁰

Article 546. The holder of a bearer security shall be entitled to check it against the matrices, whenever he deems this convenient.

SECTION 2^a. On robbery, theft or loss of credit documents and bearer securities*¹⁵¹

Article 547. The following shall be credit documents to the bearer, for the purposes of this Section, as appropriate:

- 1.º Legally issued credit documents drawn on the State, provinces or municipalities;

¹⁴⁸ ** Articles 443 to 543, repealed by Act 19/1985 dated 16th July, on Bills of Exchange and Cheques (Official State Gazette 172, dated 19th July).

¹⁴⁹ Article 544. As Article 523 has been repealed, Articles 67 and 153 of the Bills of Exchange and Cheques Act must be borne in mind.

¹⁵⁰ Article 545. Drafted according to the 9th Additional Provision of the Stock Market Act, dated 28th July 1988 (Official State Gazette 181, dated 29th July). See Article 1,492.5 Civil Procedure Act.

¹⁵¹ * See Acts dated 22nd April 1939 (Official State Gazette number 113, dated 23rd April), on rights of owners dispossessed of their belongings with effects from 1st June of the same year (Official State Gazette number 145 dated 3rd June), on duplicates, dated 24th February 1941 (Official State Gazette number 61 dated 2nd March), that applies the foregoing and creates the Office of Claimed Securities, all three declared in force by Decree 14th December 1951 (Official State Gazette number 363, dated 29th December) and Act dated 16th June 1942 (Official State Gazette 185 dated 4th July), that amends those dated 1st June 1939 and 24th February 1941, as well as the Royal Order dated 17th April 1913 (Gazette number 112, dated 22nd April), that regulates the administrative procedure and Order dated 27th October 1964 (Official State Gazette 285, dated 27th November) that applies the preceding one. In addition, Article 104 of the General Budget Act, Consolidated Text dated 23rd September 1988, amended by Act 37/1988, dated 28th December.

- 2.º Those issued by foreign nations whose listing has been authorised by the Government at the proposal of the Board of Governors of the Association of Brokers;
- 3.º Credit documents to the bearer from foreign companies constituted according to the Law of the State to which they belong;
- 4.º Bearer credit documents issued according to the Law constituting national establishments, companies or firms;
- 5.º Those issued by private concerns, provided they are collateralised with a mortgage or sufficiently guaranteed.

Article 548. Owners dispossessed, whatever the reason, may come appear before the competent Judge or Court of Law to prevent a third party being paid the capital, interest or dividends that have matured or are due to mature, as well as to prevent ownership of the title being transferred to another, or to obtain issuance of a duplicate.

The competent Judge or Court of Law shall be that which exercises jurisdiction in the district where the debtor establishment or person is located.

Article 549. The denunciation filed before the Judge or Court of Law by the dispossessed owner must state the name, nature, nominal value, number, if any, and the series of the securities; and also, if possible, the time and place when he became owner, and the means of acquisition; the time and place in which he received the last interest or dividends, and the circumstances accompanying the dispossession.

On filing the denunciation, the party dispossessed shall state, within the district where the competent Judge or Court of Law exercises jurisdiction, the domicile at which he must be served all notifications.

Article 550. Should the denunciation refer solely to payment of the capital or interests or dividends mature or due to mature, the Judge or Court of Law, having justified the legitimacy of acquisition of the title, must accept it, immediately ordering:

- 1.º That the denunciation be immediately published in the Madrid Gazette, in the Official Journal of the Province and in the Official Journal of Notices of the district, if any, stating a brief term within which the holder of the title may appear;
- 2.º For the management centre where the title was issued to or private company from which it comes, to be notified, in order for it to withhold payment of the principal and interest.

Article 551. The application shall be substantiated with a hearing of the Public Prosecutor and in the manner specified for the incidents specified by the Civil Procedure Act.

Article 552. When one year has elapsed from the denunciation without anybody contradicting it, and if dividends have been distributed during that interval, the party denouncing may apply to the Judge or Court of Law for authorisation, not only to receive the interests or dividends matured or due to mature, in the proportion and extent that may be demanded, but also the capital of the securities, if this has become callable.

Article 553. Before receiving the interest, dividends or capital, once the authorisation is granted by the Judge or Court of Law, the party dispossessed must provide a sufficient guarantee to cover the sum of the annual moneys callable and also to double the value of the last annual sum due.

Once two years have elapsed from the authorisation without the party denouncing being contradicted, the guarantee shall be cancelled.

If the party denouncing does not wish, or is not able to provide the guarantee, he may demand that the company or individual debtors deposit the interest and dividends matured or capital callable and receive the securities deposited once two years have elapsed, if no contradiction arises.

Article 554. If the capital comes callable before the authorisation, this may be requested under caution, or deposit be demanded.

When five years have elapsed without opposition to the authorisation, or ten from the time of it being callable, the party dispossessed may receive the securities deposited.

Article 555. Solvency of the guarantee shall be appraised by the Judges or Courts of Law.

The party denouncing may provide a guarantee or constitute it in Treasury Bonds, with reimbursement on expiry of the guarantee period.

Article 556. If the denunciation concerns bearer coupons separated from the title, and the opposition has not been contradicted, the party opposing may receive the sum of the coupons once three years have elapsed from the judicial declaration accepting the denunciation.¹⁵²

Article 557. Payments made to the party dispossessed pursuant to the rules aforementioned, exonerate the debtor of all obligation, and the third party considered damaged shall only retain entitlement to personal action against the party opposing who proceeded without just cause.

Article 558. If prior to exoneration of the debtor, a third bearer were to appear with the securities denounced, the former must withhold them and inform the Judge or Court of Law and the first opponent, stating in turn the name, address or particulars by which knowledge of the third bearer may be obtained.

Appearance of a third party shall suspend the effects of the opposition until decided by the Judge or Court of Law.

Article 559. If the denunciation were have the object of preventing trading of listed securities, the party dispossessed may address the Board of Governors of the Association of Brokers, to report the robbery, theft or loss, attaching a note to state the series and numbers of the securities mislaid, the time acquired and title by which they were acquired.

The Board of Governors, on the same Stock Exchange trading day, or the one immediately following, shall place a notice on the bulletin board; shall announce the denunciation made, on the Stock Exchange opening, and shall notify the other Boards of Governors of the Nation, informing them of that denunciation.

The same announcement shall be placed at the expense of the party denouncing in the Madrid Gazette, in the Official Journal of the province and in the Official Notices Journal of the respective area.

Article 560. Trading stolen, pilfered or mislaid securities, after the announcements to which the preceding Article refers, shall be null and void and the acquirer shall not enjoy the privilege of immunity from action *in rem*; but that of the third party holder against the seller and against the broker intervening in the operation shall persist.

Article 561. Within the term of nine days, the party that has denounced the robbery, theft or loss of the securities must obtain the relevant order from the Judge or Court of Law, ratifying the prohibition to trade or dispose of the said securities.

If this order is not notified or made known to the Board of Governors within the term of nine days, the Board shall annul the announcement and disposal of the securities thereafter shall be valid.

Article 562. After five years, as of the publications made by virtue of the terms of Articles 550 and 559, and from the ratification by the Judge or Court of Law stated in 561, without opposition to the denunciation arising, the Judge or Court of Law shall declare the nullity of the title stolen or lost, and shall notify the official management centre, company or individual from which it originates of this, ordering issue of a duplicate in favour of the person found to be the legitimate owner thereof.

If third opponent appears within the five- year period, the term shall be suspended until the Judge or Court of Law issues its finding.

Article 563. The duplicate shall bear the same number as the original title; shall state that it was issued as a duplicate; shall take the same effects as the former, and shall be negotiable under identical conditions.

¹⁵² Article 566. See Article 104 of the Consolidated Text of the General Budget Act.

Issue of the duplicate shall make the original title void, and this shall be recorded in the entries or records concerning this.

Article 564. If the denunciation by the party dispossessed has the object not only of payment of capital, dividends or coupons, but also to prevent trading or conveyance of listed securities on the Stock Exchange, the rules established in each one of the preceding Articles shall be observed, as appropriate.

Article 565. Notwithstanding the terms of this Section, if the party dispossessed has acquired the securities on the Stock Exchange and the denunciation is accompanied by a certificate by the broker, setting and determining the titles or securities so as to provide their identity, before appearing before the Judge or Court of Law, he may do so before the debtor establishment or person, and even before the Board of Governors of the Association of Brokers, opposing the payment and requesting the relevant publications. In that case, the debtor establishment or firm and the Board of Governors shall be obliged to proceed as if the Court or Tribunal had notified them of the denunciation being admitted and considered.

If the Judge or Court of Law does not order retention or publication within the term of one month, the denunciation made by the party dispossessed shall cease to have effect and the debtor establishment or person and Board of Governors shall be free of all liability.

Article 566. The preceding provisions shall not be applicable to notes issued by the Bank of Spain, nor those of the same class issued by establishments subject to the same regime, nor bearer securities issued by the State, that are governed by the special Laws, Decrees and Regulations.

TITLE XIII

On letter-orders of credit

Article 567. Letter-orders of credit are those issued from businessperson to businessperson, or to attend to a business operation.

Article 568. The essential conditions of letter-orders of credit shall be:

- 1.^a That they shall be issued in favour of a specific person and not to the order;
- 2.^a They shall be contracted for a set, specific sum, or one or more indeterminate amounts of money, although all comprised within a maximum, the limit must be specified precisely.

Those that do not fulfil any of the latter circumstances shall be considered as simple letters of recommendation

Article 569. The issuer of a letter of credit shall be obliged to the person to whose charge he issued it, for the sum paid by virtue of it, up to the maximum set therein.

Letter-orders of credit may not be noted, even when they are not paid, nor shall their bearer acquire any entitlement to action over that violation against the party issuing it.

The payer shall be entitled to demand evidence of the identity of the person in whose favour the letter of credit was issued.

Article 570. The issuer of a letter of credit may cancel it, notifying the bearer and the party to whom it is addressed.

Article 571. The bearer of a letter of credit shall reimburse the issuer the moneys received without delay.

If he were not do so, this may be demanded from him by enforcement action, with the legal interest and current exchange in the city where the payment was made, in the place where the reimbursement is verified.

Article 572. If the bearer of a letter of credit has not made use of it within the term agreed with the issuer thereof, or should a term not be set, within that of six months, as of the date thereof, at any point in Europe, and within twelve outside it, it shall be null and void *de iure* and *de facto*.

BOOK III

On maritime commerce^{*153}

TITLE ONE

On ships ^{**154}

Article 573. Merchant vessels shall constitute a property that may be acquired and conveyed by any of the legally recognised means. The acquisition of a ship must be recorded in a written document, which shall not be effective in respect of a third party unless duly registered at the Business Registry.

The ownership of a ship may also be achieved by continuous possession in good faith for a three-year period, with fair title duly registered.

Should any of above requisites be lacking, continued possession for ten years shall then be required to acquire ownership.

The Master of a ship may not acquire her by prescriptive acquisition.¹⁵⁵

¹⁵³ * See the Convention dated 9th April 1965 (Official State Gazette number 231 dated 26th September 1973), on Facilitation of International Maritime Traffic, and Act 6/1970 dated 4th April, on the Protection of International Maritime Traffic (Official State Gazette number 82 dated 6th April).

¹⁵⁴ ** On the Legal Statute of Ships, see section 1 of the Sole Additional Provision of Royal Decree 1,828/1999 dated 3rd December, that approves the Regulations of the Register of General Contracting Conditions (Official State Gazette number 306 dated 23rd December), by virtue of which "The Register of Moveable Assets is created, formed by the following sections. 1. Ships and Aircraft Section (...)" ; Royal Decree 1,027/1989 dated 28th July, on flag registration, ship registration and maritime registries; Royal Decree 1,387/2000 dated 10th November, approving the Regulations on inspection and certification of civil vessels (Official State Gazette number 285 dated 28th November); the International Convention on Load Lines, signed in London on 5th April 1966, ratified by Instrument dated 6th June 1968 (Official State Gazette number 192 dated 10th August 1968); the Regulation on Shipping Tonnage approved by the Royal Decree dated 15th December 1909 (Gazette number 353 dated 19th December 1909); Order dated 10th November 1966 on tonnage of Shelter-Deck ships (Official State Gazette number 282 dated 25th November); Order dated 6th March 1989 (Official State Gazette dated 13th March) on ship log books, sea logs and engine room logs, amended by Order dated 30th June 1989 (Official State Gazette dated 1st July); Regulations on Dispatch of Vessels, approved by Ministerial Order dated 18th January 2000; Order dated 14th July 1964, on Minimum Crew Indicator Table for Merchant and Fishing Vessels, (Official State Gazette number 170 dated 16th July) Also, see Royal Decree 1,119/1989 dated 15th September, that regulates traffic of special high speed vessels.

Also, see Royal Decree 297/1998 dated 27th February, that regulates the safety requirements of leisure vessels, semi-finished leisure vessels and their components, in application of Directive 94/25/EC; Resolution dated 30th December 1997, issued by the Directorate General of the Merchant Navy, that implements the Order dated 17th June 1997, that regulates the conditions to master leisure craft (Official State Gazette number 8 dated 9th January); Act 66/1997 dated 26th December, on Tax, Administrative and Social Order Measures, that creates the fee for the Issue of Professional and Leisure Maritime Qualifications and establishes their amount, amended by Act 24/2001 dated 27th December (Official State Gazette 313 dated 31st December); Act 62/1997 dated 26th December, amending Act 27/1992, dated 24th November, on State Ports and the Merchant Navy (Official State Gazette number 312 dated 30th December), as well as Act 24/2001, cited; Act 14/2000 dated 29th December (Official State Gazette 313 dated 30th December), on Tax, Administrative and Social Order Measures, that creates the fee for inspection services and control of the merchant navy, as regulated in Article 105 of the said Act 27/1992; as well as Act 24/2001, cited; Order dated 14th November 1997, approving safety regulations for the performance of underwater activities (Official State Gazette number 280 dated 22nd November); Royal Decree 1,621/1997, dated 24th October, approving the Regulations to control compliance with international maritime safety rules, prevention of pollution and on living and working conditions on foreign ships using ports or facilities located within Spanish jurisdictional waters (Official State Gazette number 264 dated 4th November); Royal Decree 1,562/1997, dated 10th October, amending Royal Decree 442/1994, dated 11th March, on shipbuilding incentives and financing (Official State Gazette number 250 dated 18th October); Royal Decree 1,466/1997, dated 19th September, determining the legal regime applying to regular coastal shipping lines and to public interest shipping (Official State Gazette number 266 dated 22nd September); Royal Decree 1,253/1997 dated 24th July on minimum conditions required of ships carrying hazardous or polluting goods, with origin or destination in Spanish domestic seaports (Official State Gazette number 198 dated 19th August); Royal Decree 1,216/1997 dated 18th July, establishing the minimum health and safety at work provisions on board fishing ships (Official State Gazette number 188 dated 7th August); Order dated 17th June 1997, regulating the conditions required to master leisure vessels.

See the instrument of adhesion of Spain to the International Convention on Maritime Liens and Mortgages of 1993, signed in Geneva on 6th May 1993 (Official State Gazette number 99 dated 23rd April 2004).

¹⁵⁵ Article 573. See, in relation to the modes of acquisition under Private Law, Articles 574 (construction), 578 (disposal) and 803 (abandonment to the benefit of insurers) of this Code, and Article 609 of the Spanish Civil Code. With regard to means of acquisition under Public Law, and for seizure or capture the International Convention of The Hague, dated 18th October 1907,

Article 574. Shipbuilders may use the materials and follow, as regards to their construction and fitting out, the systems most convenient to their interests. Ship owners and seafarers shall be subject to the Laws and Regulations that the Public Administration provides on navigation, customs, health, safety of ships and other similar matters.¹⁵⁶

Article 575. Partners in the ownership of a ship shall enjoy pre-emptive and repurchase rights in relation to sales to other parties; although they may only avail themselves of those rights within a period of nine days following registration of the sale at the Registry, by consigning the price immediately.¹⁵⁷

Article 576. The sale of the ship shall always be understood to include the rigging, equipment, fittings and engines, if steam, belonging to her, that are also owned by the seller.

The sale shall not include any weapons, war munitions, food stores or bunker fuel.

The seller shall be obliged to deliver to the buyer a certified copy of the registration sheet of the ship at the Registry up to the date of the sale.¹⁵⁸

Article 577. If the disposal of the ship is performed while she is on a voyage, the buyer shall accrue the full price of carriage of any goods on board from the time when the last cargo was loaded, and the buyer shall also be liable for paying the crew and other individuals comprising the staff thereof on that same voyage.

If the sale takes place after the ship has reached her port of destination, the price of carriage of the goods will correspond to the seller, who shall also be liable for paying the crew and other individuals forming the crew, except, in each of the two cases, as otherwise agreed.

Article 578. If, when the ship is on a voyage or in a foreign port, the owner or owners thereof voluntarily dispose of her, either to Spaniards or to aliens domiciled in a capital city or port of another nation, the corresponding deed of sale shall then be signed before the Spanish Consul in the port where the voyage ends, and that deed shall not take effect with regard to a third party unless it is duly registered at the Registry of the Consulate. The Consul shall immediately forward an authenticated copy of the deed of sale-purchase of the ship to the Business Registry at the port where she is registered and enrolled.

In all cases, disposal of the ship must be recorded, stating whether the seller has received all or part of her price, or partially or fully retains any credit upon the same ship. Should the sale be made to a Spanish subject, the fact shall be recorded on the ship's log.

When a ship on a voyage becomes unseaworthy, the Master shall appear before the competent Judge or Court of Law at the port of arrival, if this is Spanish; and if abroad, the Spanish Consul, if any, or local Judge or Court of Law or authority where there is none, and the Consul, or the Judge or Court of Law, or, failing that, the local authority, shall order proceedings to inspect the ship.

relative to certain Restrictions with regard to the Exercise of the Right of Capture in Naval War, the Declaration of London dated 26th February 1909, concerning the Laws of Naval War.

¹⁵⁶ Article 574. Take into consideration Royal Decree 826/1991 dated 24th May, on premiums for ship building, as well as the Order dated 2nd August 1991 (Official State Gazette 194 dated 14th August), approving the Regulation on Premiums for Ship Building. See Article 618.3 of the Code of Commerce, on the responsibility of the master and shipping company for infringement of the Laws and Regulations on Customs, Police, Health and Navigation, and also Article 612.16 of this Code, and London Convention dated 1st November 1974, for the Safety of Life at Sea, ratified by the Instrument dated 16th August 1978 (Official State Gazette number 144 dated 16th June 1980, number 145 dated 17th June and number 146 dated 18th June) and Amendments dated 20th November 1981 (Official State Gazette dated 21st July 1984 and 22nd and 23rd January 1985), 17th June 1983 (Official State Gazette dated 11th to 13th June 1986), 29th April 1987 (Official State Gazette dated 19th June 1989), 28th October 1988 (Official State Gazette dated 25th November 1989), 28th October 1998 (Official State Gazette dated 24th January 1990, corrected in Official State Gazette dated 8th March 1991), 9th November 1988 (Official State Gazette dated 19th May 1990) Protocol dated 17th February 1978, Instrument dated 9th April 1980 (Official State Gazette 4th May 1981) and amendments dated 20th November 1981 (Official State Gazette dated 21st July 1984) and 10th November 1988 (Official State Gazette dated 14th May 1990) Royal Decree 1,661/1982 dated 25th June (Official State Gazette dated 24th July), that applies the rules of the Convention dated 1st November 1974 to national ships; order dated 10th June 1983 (Official State Gazette dated 29th and 30th September and 1st October) amended by that dated 31st January 1986, in turn amended by that dated 29th August of that same year.

¹⁵⁷ Article 575. See Articles 589 and 592 of this Code and 1,521 and 1,522 of the Spanish Civil Code.

¹⁵⁸ Article 576. See Articles 747 of this Code, 7 of the Naval Mortgage Act; 62 of the Consolidated Text dated 17 October 1974 on General Ordinances on Customs Revenue and the Order dated 22nd September 1978 that interprets the updated concept of stores.

If the consignee or insurer reside at that port, or have representatives there, they must then be asked to take part in the proceedings acting for the appropriate party.¹⁵⁹

Article 579. Once the damage to the ship is proven, as well as that it is impossible to repair so that she may continue her voyage, her sale at public auction shall be declared, subject to the following rules:

- 1.^a Appraisal and prior inventory of the ship's hull, her rigging and engines, equipment and other objects, providing the report on these proceedings to those who may be interested in the auction;
- 2.^a The court order or decree establishing the auction shall be announced in the usual locations, placing its announcement in the newspapers of the port where this is to be held, if any, and in any others as determined by the Court of Law;

The date fixed for the auction may not be less than 20 days later.

- 3.^a These announcements shall be repeated every ten days and their publication recorded in the proceedings;
- 4.^a The auction shall take place on the day stated, with the formalities established in the ordinary Civil Law for judicial sales;
- 5.^a If the sale is performed while the ship is abroad, the appropriate rules for such cases shall apply.¹⁶⁰

Article 580. In all judicial sales of a ship to pay creditors, preference is to be accorded in the order listed below:

1. Credits in favour of the Public Treasury duly evidenced by means of an official certification issued by the competent authority;
2. The judicial costs of the proceedings, according to an appraisal approved by the Judge or Court of Law;
3. Fees for pilotage, tonnage, sea-going fees or harbour fees, justified with sufficient certifications extended by the managers in charge of collection;
4. Salaries of the depositaries and guards of the ship and any other expenses arising from her conservation from entry to the port until her sale, that are settled or owed by virtue of a justified account and approved by the Judge or Court of Law;
5. Rental of the warehouse where the rigging and equipment of the ship are stored under contract;
6. The wages owed to the Master and crew on their last voyage, which shall be ascertained by way of an assessment performed on the basis of the ship's roll and the accounting and inventory books of the ship, approved by the Merchant Navy Department Head, where available, and failing that, by the Consul, Judge or Court of Law;
7. Reimbursement of the price of any cargo items that the Master may have sold to repair the ship, provided that the sale has been ordered by the Court pursuant to the proper formalities required in those cases and duly recorded in the certificate of registration of the ship;
8. The part of the price that has not been paid to the last seller, any credits pending payment for materials and labour for the building of the ship, when she has not yet set sail, and those arising from repairing and fitting out of the ship and stocking her with stores and fuel during her last voyage.

¹⁵⁹ Article 578. See Articles 18 and 19 of the Naval Mortgage Act dated 21st August 1893. Also see Addendum III to the Regulations for organization and regime of Notarial Offices, approved by Decree dated 2nd June 1944 (Official State Gazette number 189 dated 7th June; correction of errors in Official State Gazette number 189, dated 7th June; correction of errors in Official State Gazette number 217, dated 4th August), and Royal Decree 1,426/1989, approving Notarial Fees, finally see Act 7/1987 dated 29th May (Official State Gazette dated 2nd June) amended by Act 37/1988 dated 28th December (Official State Gazette on 29th December), on consular fees.

¹⁶⁰ Article 579. See Articles 582, 584 and 845 of this Code.

In order to enjoy this preference, any credits claimed under this Article must have been recorded in a contract registered at the Business Registry or, in the case of credits incurred for the ship while at sea and prior to her return to her home port, they must then have been entered therein with the authorisation required in such cases, and recorded on the certificate of registration of the ship.

9. Bottomry loan moneys taken on the hull, keel, rigging and equipment of the ship before her departure, evidenced by contracts executed according to the Law and annotated at the Business Registry; those that may have been taken during the voyage with the authorisation stated in the preceding number, fulfilling the same requisites, and any insurance premiums accredited with the policy of the contract or certification obtained from the Broker's books;
10. Any compensation owing to consignors for the value of goods loaded but not delivered to the consignees, or for breakages suffered for which the ship is liable, provided one and the other are recorded in a judgement issued by a court or arbiter.

(Repealed)¹⁶¹

Article 581. If the proceeds of the sale do not cover payment to all the creditors included in a same number or rank, the remainder shall be distributed among these proportionally.

Article 582. Once the deed of judicial sale performed at public auction is executed and registered at the Business Registry, all the other liabilities of the ship in favour of creditors shall be considered to have expired.

However, if the sale were voluntary and if performed while the ship is on a voyage, the creditors shall conserve their rights against the ship until she returns to her home port and three months after the date of registration of the sale at the Registry, or from her return.

Article 583. If, when travelling, the Master were to need to enter into any one or a number of the obligations stated in numbers 8 and 9 of Article 580, he shall then appear before a Judge or Court of Law, if in Spanish territory, and if not, before the Spanish Consul, if any, and failing that, the relevant Judge or Court of Law or local authority, producing a certificate of the registration sheet mentioned in Article 612 and documents evidencing the obligation contracted.

The Judge or Court of Law, Consul or Local Authority, as appropriate, considering the result of the proceedings conducted, shall perform a provisional annotation of its outcome on the certification, so that it may be formalised at the Registry when the ship arrives at her home port or so that it may be accepted as a legal, preferential obligation in the event of her sale before return, due to the ship having been sold as a result of a declaration of unseaworthiness.

Omission of that formality shall give rise to the Master being held personally liable for the credits affected for that reason.¹⁶²

Article 584. Ships affected by the liability of the credits stated in Article 580 may be embargoed and sold judicially, in the manner foreseen in Article 579, at the port where they are located, at the instance of any of the creditors; however, if they are loaded and dispatched to set sail, the embargo cannot be enacted except with regard to debts contracted to fit out and stock the ship on that same voyage, and even so, the embargo shall cease if any party with an interest in that expedition provides a guarantee that the ship shall return within the period of time stated in the charter, and if not, even though fortuitous, to settle the debt when this is legitimate.

The ship may only be embargoed at her home port with regard to debts of any other kind whatsoever not included under Article 580 cited.¹⁶³

¹⁶¹ The last paragraph was repealed by Final Provision 2.7 of Act 22/2003, dated 9th July, as drafted by the Sole Repealing Provision of Act 38/2011, dated 10th October. The last paragraph was added by Final Provision 2.7 of Act 22/2003, dated 9th July.

¹⁶² Article 583. See Articles 611, 612.9, 720 and 728 of this Code and Article 154 of the Business Registry Regulations. On interpretation by Consuls, see the note to Article 578 above.

¹⁶³ Article 584. Take into consideration, on the preventive embargo of ships, the International Convention dated 10th May 1952 dealing with the unification of certain rules pertaining to the preventive embargo of sea-going ships (Official State Gazette number 5, dated 5th January 1954) and Act 2/1967 dated 8th April 1967 (Official State Gazette number 86 dated 11th April) Also, see Articles 589, 690.4 and 755.11 of this Code.

Article 585. For all legal purposes not otherwise amended or restricted under the provisions of this Code, ships shall at all times retain their status as moveable assets.¹⁶⁴

TITLE II

On the persons involved in maritime trade^{*165}

SECTION ONE. On ship owners and shipping agents^{**166}

Article 586. The ship owner and the shipping agent shall be held civilly liable for the actions of the Master and the obligations contracted by him to repair, fit out and stock the ship, provided that the creditor justifies that the moneys claimed were invested to the benefit of the former.

A shipping agent is defined to be the person in charge of stocking or representing the ship in the port where the ship is.¹⁶⁷

Article 587. The shipping agent shall also be held civilly liable for compensating third parties due to actions by the Master in custody of the goods loaded on the ship; but may be exonerated from this by abandoning the ship with all her belongings and the charter fees that may have been accrued during the voyage.¹⁶⁸

Article 588. Neither the ship owner nor the shipping agent shall be held liable for any obligations that the Master may have contracted, if he were to act outside the attributions and powers granted to him due to his office, or granted to him in that capacity.

However, if the moneys claimed were invested in the benefit of the ship, the liability shall then lie with her owner or shipping agent.¹⁶⁹

Article 589. If two or more persons are co-owners of a merchant ship, it shall then be assumed that the co-owners have constituted a company.

That company shall be governed by the resolutions made by the majority of its partners. That majority shall consist of that of its voting partners.

If there are no more than two partners, in the event of disagreement, the matter shall be settled by the vote of the partner with the largest shareholding. If the shares are equal, it shall be decided by drawing lots. The representative

¹⁶⁴ Article 585. See Article 1 of the Naval Mortgage Act dated 8th August 1893. Also, see Articles 335 and 336 of the Spanish Civil Code.

^{165*} On Seafarers, see the Order dated 3rd October 1972 (Official State Gazette number 259 dated 28th October 1972) on Maritime Registration; the ILO Convention dated 13th May 1958, number 108, on Seafarers' Identities (Official State Gazette number 124, dated 24th May 1972), ILO Convention 108 on Seafarers' Identity Documents, dated 13th May 1958, approved by Instrument dated 8th April 1971 (Official State Gazette number 124 dated 24th May 1972); Orders dated 23rd December 1981 (Official State Gazette dated 30th January 1982) and 19th April 1983 (Official State Gazette dated 26th April), on professional identity cards; and Order dated 4th March 1992, on the issue of duplicates of maritime identity documents due to loss or deterioration (Official State Gazette dated 14th April); ILO Convention number 73 on Medical Examination (Seafarers), dated 29th June 1946 (Official State Gazette 121 dated 20th May 1972); ILO Convention number 53 on Officers' Competency Certificates, dated 24th October 1936 (Official State Gazette number 119 dated 18th May 1972).

^{166**} See the International Convention on Limitation of Liability for Maritime Claims, signed in London on 19th November 1976 (Official State Gazette number 310 dated 27th December 1986); Instrument of Adhesion by Spain to the Protocol of 1996, that amends the Convention on Limitation of Liability for Maritime Claims, signed in London on 2nd May 1996 (Official State Gazette number 50 dated 28th February), and denunciation of the prior Conventions dated 1924 and 1957, as well as the Protocol dated 1979 (Official State Gazette number 52, dated 2nd March 2005). Likewise, on registration of maritime companies, see Royal Decree 1,027/1989 dated 28th July, already cited.

¹⁶⁷ Article 586. See Articles 395, 616 and 620 of this Code.

¹⁶⁸ Article 587. See Articles 586, 590 and 619 of this Code. Also, take into consideration the provisions of Articles 826 and following of this Code, with regard to the liability of the shipping agent in the event of a collision.

¹⁶⁹ Article 588. See Articles 586, 587, 610.5 and 6 and 618 of this Code.

of the minority partner shall be entitled to one vote and; proportionally, the other co-owners will be entitled to as many votes as equal parts to that of the minority partner.

The ship may not be seized, embargoed or subject to total enforcement over the private debts of a partner, but the proceedings shall instead be limited to the portion of the ship owned by the debtor, without hindering navigation.¹⁷⁰

Article 590. The co-owners of a ship shall be held civilly liable, in the proportion of the corporate assets they respectively own for the consequences of the actions of the Master, as stated in Article 587.

Each co-owner may be exonerated of that liability by abandoning his stake in the ship before a Notary Public.¹⁷¹

Article 591. All the co-owners shall be obliged, proportionally to their respective stakes, to pay the expenses of repairs to the ship and any others carried out by virtue of a majority agreement.

They shall also be held liable in an equal proportion for the expenses of maintenance, equipment and fitting out the ship that are necessary for navigation.¹⁷²

Article 592. The majority resolutions with regard to repairs, equipment and stocking the ship at the port of departure shall be binding on the minority, unless the minority partners renounce their stake, which must be acquired by the other co-owners, following judicial appraisal of the value of the part or parts assigned.

Resolutions by the majority on dissolution of the company and sale of the ship shall also be binding on the minority partners.

Sale of the ship must be performed at public auction, subject to the specifications of the Civil Procedure Act, unless the co-owners unanimously resolve otherwise, always notwithstanding the rights of pre-emption and repurchase set forth in Article 575.¹⁷³

Article 593. The owners of a ship shall have preference in her charter over non-owners, under equal conditions and price. If two or more of them coincide in claiming that right, the one with the larger stake shall have preference; and if they have the same, it shall then be decided by drawing lots.

Article 594. Co-owner partners shall appoint a manager that shall represent them as shipping agent. Appointment of a director or shipping agent shall be revocable at the will of the partners.¹⁷⁴

Article 595. The shipping agent, whether the actual ship owner or a manager for the owner or an association of co-owners, must have trading skills and his name must have been recorded on the register of businesspersons in the province.

The shipping agent shall represent the owners of the ship and may, in his own name and in that capacity, manage all matters of interest to the business thereof, in and out of court.¹⁷⁵

Article 596. The shipping agent may perform the duties of the Master of the ship, subject, in all cases, to the terms set forth in Article 609.

If two or more co-owners request the office of Master for themselves, the dispute shall be put to the vote of the partners and, if the vote ends in a draw, it shall be resolved in favour of the co-owner who holds the largest stake in the ship.

¹⁷⁰ Article 589. See Article 5 of the Naval Mortgage Act dated 21st August 1893.

¹⁷¹ Article 590. See Article 393 of the Spanish Civil Code.

¹⁷² Article 591. See Article 2,161.8 of the Civil Procedure Act 1881. See also Articles 393 and 395 of the Spanish Civil Code.

¹⁷³ Article 592. See Articles 2,161.8, 2,048 to 2,055 and 2,161.6 and 7 of the Civil Procedure Act 1881.

¹⁷⁴ Article 594. See Articles 279 of the Spanish Civil Code and 5 of the Naval Mortgage Act dated 21st August 1893.

¹⁷⁵ Article 595. See Articles 4 and 17 of this Code. Also, see Article 4.4 of the Regulations on Maritime Interpreter Brokers, dated 30th November 1933, approved by Royal Decree dated 8th July 1930 (Gazette number 195 dated 14th July 1930). Likewise, Article 2 of the Act dated 22nd December 1949 (Official State Gazette number 358 dated 24th December).

If the stake held by the claimants is the same and there is a draw, it shall be decided by drawing lots.¹⁷⁶

Article 597. The shipping agent shall appoint and enrol the Master and shall hire on behalf of the owners, who shall be obliged by everything regarding repairs, crew enrolment, navigational supplies, provisions of food stores and bunker fuel and the ship's chartering, and in general, everything related to the navigational needs.

Article 598. The shipping agent may not order a new voyage, or undertake the new charter for it, nor insure the ship without the authorisation of her owner or a resolution by the majority of the co-owners, except if his charter of appointment has granted him those powers.

If he were to take out insurance without authorisation to do so, he shall then be held jointly and severally liable for the solvency of the insurer.¹⁷⁷

Article 599. The managing shipping agent of a partnership shall render accounts to the partners for the result of each voyage by the ship, notwithstanding the obligation of always having the books and correspondence concerning the ship and her expeditions available to them.¹⁷⁸

Article 600. Once the accounts by the shipping agent are approved by a relative majority, the co-owners shall then settle any expenses proportionally in line with their stake, notwithstanding any civil or criminal actions that the majority might consider they are entitled to undertake thereafter.

In order to settle the payment, the managing shipping agents shall have enforcement action, which shall be dispatched by virtue of the majority and without any further formalities other than the recognition of the signatures of the parties who voted for the resolution.

Article 601. If there is profit, the co-owners may claim the relevant amount of their stake from the managing shipping agent by enforcement action, with no further requisite other than the recognition of the signatures on the certificate of approval of the accounts.

Article 602. The shipping agent shall compensate the Master for all expenses from own or third party funds that he has disbursed on the ship.¹⁷⁹

Article 603. Before the ship sets sail, the shipping agent may, at his discretion, dismiss the Master and individual members of the crew whose enrolment is not for a specific time or voyage, paying them the wages accrued according to their contracts, and without any compensation whatsoever, unless there is a specific, defined clause to that end.

Article 604. Should the Master or any other member of the crew be dismissed during the voyage, they shall receive their salary until they return to the port of enrolment, unless there is a fair reason for their dismissal, all pursuant to Articles 636 and following of this Code.¹⁸⁰

Article 605. If the enrolments of the Master and members of the crew by the shipping agent are for a specific time or voyage, they may not be dismissed until fulfilment of their contracts, except in the event of insubordination over serious matters, robbery, theft, habitual drunkenness, or damage caused to the ship or her cargo due to malice or manifest or proven negligence.¹⁸¹

Article 606. If the Master is a co-owner of the ship, he may not be dismissed without the shipping agent reimbursing him his stake in the venture, which in the event of disagreement between the parties, shall be assessed by appraisers appointed in the manner established in the Civil Procedure Act.¹⁸²

¹⁷⁶ Article 596. See Article 593 of this Code.

¹⁷⁷ Article 598. See Article 589 of this Code.

¹⁷⁸ Article 599. See Article 589, 594, 595, 597, 598 and 600 of this Code.

¹⁷⁹ Article 602. See Articles 88 to 100 of the Merchant Navy Labour Ordinance dated 20th May 1969. Also, see Articles 638, 639 and 640 of the Code of Commerce.

¹⁸⁰ Article 604. See Article 95 of the Merchant Navy Labour Ordinance.

¹⁸¹ Article 605. See Articles 607 and 637 of this Code. On extremely severe offences that may cause dismissal, see Article 177 of the Merchant Navy Labour Ordinance cited above.

¹⁸² Article 606. See Article 616 of the Code of Commerce.

Article 607. If the co-owner Master has obtained command of the ship by specific clause in the articles of incorporation, he may not be deprived of office except for the reasons set forth in Article 605.

Article 608. In the event of voluntary sale of the ship, the whole contract between the shipping agent and the Master shall expire, the latter reserving the right to the compensation to which he is entitled, according to the terms entered into with the shipping agent.¹⁸³

The ship so sold shall be assigned to assure payment of that compensation if, after having taken action against the seller, he were to be found insolvent.

SECTION 2.^a On masters and skippers of ships *¹⁸⁴

Article 609.¹⁸⁵ The *Masters* and skippers *must be Spaniards*, have sufficient legal capacity to bind themselves pursuant to this Code, provide evidence of their skills, capacity and the necessary conditions to command and direct the ship, as established in the Laws, Ordinances or Regulations of the Merchant Navy or on navigation, and not be barred from appointment according to these.

If the owner of a ship wishes to be her Master, while lacking legal qualification to act as such, he shall limit his activities to the financial management of the ship and entrust the navigation to a person with the qualifications required by those Ordinances and Regulations.

Article 610. The following powers shall fall within the remit of the office of Master or skipper of the ship:

- 1.^a To appoint or hire crewmembers in the absence of the shipping agent, and to propose these when he is present, but without the shipping agent being able to impose any individual on him against his specific refusal;
- 2.^a To command the crew and direct the ship to her port of destination, according to the instructions received from the shipping agent;
- 3.^a To impose, subject to the contracts and Laws and Regulations of the Merchant Navy, and when on board, correctional penalties upon those who fail to fulfil his orders or that commit disciplinary offences, conducting the relevant summary proceedings with regard to an offence committed on board at sea, which he shall deliver to the authorities who must be informed of these at the first port of arrival;
- 4.^a To enter into ship charter contracts in the absence of the shipping agent or his consignee, acting according to the instructions received and, with the utmost diligence, assuring the interests of the owner;
- 5.^a To apply all the appropriate provisions to keep the ship properly stored and equipped, to which end he shall purchase everything necessary, whenever there is no time to request instructions from the shipping agent;

¹⁸³ Article 608. See the aforementioned Merchant Navy Labour Ordinance dated 20th May 1969.

¹⁸⁴ * The Labour Regulations for Seafarers are set forth in the following provisions: Merchant Navy Labour Ordinance, approved by Order dated 20th May 1969 (Official State Gazette numbers 156 to 160 of 1st to 5th July 1969); Labour Ordinance for Shipping Companies, approved by Order dated 9th August 1969 (Official State Gazette number 211 dated 3rd September); Order dated 9th August 1969 (Official State Gazette number 216 dated 9th September) that approves the Labour Ordinance applicable to ships for Interior Traffic in Ports; Order dated 28th July 1977 (Official State Gazette number 205, dated 26th August), on Labour Ordinance for Operative Personnel of the Port Authorities assigned to the Ministry of Public Works; Labour Ordinance for Port Stevedores, by Order dated 29th March 1974 (Official State Gazette 81 dated 4th April); Order dated 24th July 1970 (Official State Gazette 182 dated 31st July) on Labour Ordinance for Ship Consignor Companies.

See Workers' Statute, the Consolidated Text of which was approved by Royal Legislative Decree 1/1995 dated 24th March (Official State Gazette number 75, dated 29th March), and the ILO Conventions number 145 on Continuity of Employment (Seafarers), dated 28th October 1976, ratified by Instrument dated 10th April 1978 (Official State Gazette number 289, dated 2nd December 1980), and on Seafarers' Annual Leave with Pay, dated 29th October 1976, ratified by Instrument dated 16th February 1979 (Official State Gazette number 69, dated 29th March 1980). In addition, see Royal Decree 285/2002 dated 22nd March, amending Royal Decree 1,561/1995 dated 21st September, on special working days at sea (Official State Gazette number 82 dated 5th April).

¹⁸⁵ Repealed, in respect of the Spanish citizenship requirement for the performance of the post of Master, by the Sole Repealing Provision 2.t of Act 27/1992, dated 24th November, as drafted by Article 23.3 of Act 25/2009, dated 22nd December.

- 6.^a In urgent cases, when on a voyage, to provide for repairs to the hull and engines of the ship and her rigging and equipment that are absolutely necessary in order for the ship to be able to continue and conclude her voyage; but if the ship were to reach a point where there is a consignee of the ship, he shall then act in agreement with him.¹⁸⁶

Article 611. In order to attend to the obligations mentioned in the preceding Article, should the Master not have funds or expect to receive them from the shipping agent, he shall seek them in the successive order stated below:

- 1.º Requesting them from the consignees of the ship or correspondents of the shipping agent;
- 2.º Resorting to the consignees of the cargo or parties with an interest therein;
- 3.º Issuing against the shipping agent;
- 4.º Taking the necessary moneys by means of a bottomry loan;
- 5.º By selling a sufficient amount of the cargo to cover the moneys that are absolutely indispensable to repair the ship and to enable her to continue her voyage.

In the latter two cases, he shall resort to the judicial authority of the port, while in Spain, or to the Spanish Consul, when abroad; and wherever there is not one, to the local authorities, proceeding according to the provisions of Article 583 and what is set forth in the Civil Procedure Act.¹⁸⁷

Article 612. The following obligations shall be inherent to the office of Master:

- 1.^a Before setting sail, to have a detailed inventory on board of the hull, engines, rigging, equipment, safety devices and other fittings of the ship; her certificate of registration or seaworthiness, the roll of members of the ship's crew, and the contracts entered into with them; the list of passengers, the health certificate; certification from the Registry to accredit ownership of the ship and all the obligations thereon up to that date; the charter contracts, or authorised copies of these; the bills of lading or cargo lists, and the certificate of inspection or examination by appraiser, if this was performed at the port of departure.
- 2.^a To carry a copy of this Code on board.
- 3.^a To have three stamped folio books, the beginning of each of which must bear a note stating the number of folios it contains, signed by the Maritime Authority and, failing that, by the competent authority.

The first book, that shall be called the "Ship's Log" shall be used to keep a daily record of the weather, the prevailing winds, the courses followed, the rigging used, the engine speed on, the manoeuvres carried out and other navigational circumstances. It shall also be used to record any failures suffered by the ship, in her hull, engines, rigging and equipment, whatever their cause, as well as any defects and breakages suffered by the cargo and the goods and amount of jettison, if any, and, in cases that are difficult to solve, that require the advice or a meeting of the officers on board and even the crew and passengers, the decisions adopted

¹⁸⁶ Article 610. See Article 618.5 of this Code. Also, see Article 15 of the Merchant Navy Labour Ordinance, dated 20th May 1969, cited above. With regard to the *technical duties* of the master, see Articles 612.6, 7, 13 and 16 of this Code; with regard to the *public duties*, see Articles 700 of this Code and 94 and 722 to 730 of the Spanish Civil Code, with regard to what are called *business duties*, see Articles 578 and 707 of this Code.

N.1. See Articles 634 and following of this Code.

N.2. See Article 618.6 and 7 of this Code.

N.3. See Articles 174 and following of the Merchant Navy Labour Ordinance.

N.5. See Article 588 of this Code.

N.6. See Article 35 of the Naval Mortgage Act, dated 21st August 1893. Also, see Article 588 of this Code.

¹⁸⁷ Article 611. N.4. See Article 446 of the Code of Commerce.

N. 4. See Articles 720 and 728 of this Code.

Take also into consideration Articles 32 and 33 of the Naval Mortgage Act.

N.5. See Article 325.2 of the Customs Ordinances, the consolidated text of which was approved by Decree dated 17th October 1947 (Official State Gazette number 350, dated 16th December 1947).

In fine: Article 2,161 of the Civil Procedure Act, 1881.

shall be recorded. The Deck Log shall be used for the news stated and the steam or engine log kept by the Engine Room Officer.

The second book, called "Accounting Book", shall be used to record all the items collected and paid on behalf of the ship, annotating all specifications, item by item, the origin of the moneys collected, the expenditure on food, repairs, acquisition of fittings or equipment, stores, bunker fuel, consumables, salaries and other expenses, of whatever kind. A list shall also be provided of all the members of the crew, stating their addresses, their wages and salaries and what they have received on account, as well as moneys paid directly to their families.

The third book, titled "Cargo", shall annotate the loading and unloading of all the freight, stating the brands and packages, names of the consignors and consignees, ports of loading and unloading and the carriage fees accrued. That same book shall also be used to register the names and origin of the passengers, the number of items of luggage they board and the cost of their passage.

- 4.^a Before taking on cargo, to perform an inspection of the ship, together with the officers on board and two appraisers, if required by the consignors and passengers, to ascertain whether she is watertight, with the rigging and engines in good order and with the equipment required to ensure her seaworthiness, conserving the certification of that inspection, signed by all who conducted it, under their responsibility.

The appraisers shall be appointed, one by the Master of the ship and another by those requesting the inspection and, in the event of disagreement, a third one shall be appointed by the Maritime Authority of the port.

- 5.^a Remaining constantly on his ship with the crew while the cargo is received on board, and to carefully oversee her stacking; not allowing any hazardous freight or materials to be boarded, such as flammable or explosive substances, without the precautions recommended for their packages, handling and insulation; not to allow any cargo at all to be carried on the open deck that due to its shape, volume or weight, might hinder the manoeuvres at sea and compromise the safety of the ship; and, if the nature of the freight, the special nature of the expedition, and mainly the favourable season in which it is undertaken, allow any cargo to be carried on deck, he must hear the opinion of the ship's officers and obtain the approval of the consignors and of the shipping agent.
- 6.^a To call for a pilot at the cost of the ship in all circumstances where this is required by the navigational needs, and especially when having to enter a port, canal or river, or enter roadsteads or an anchoring area that neither the officers nor crew of the ship know.
- 7.^a To be on deck on landfall and to take command when entering and leaving ports, canals, creeks and rivers, unless there is a duty pilot on board. He must not remain off the ship overnight, except under severe or professional circumstances.
- 8.^a On forced putting into a port, to appear before the maritime authority, when in Spain, and the Spanish Consul, when abroad, before twenty-four hours have elapsed, and to state his name, registration and origin of the ship, her cargo and reason for putting into port. Such statement shall be approved by the Authority or Consul, if they deem it acceptable on examination, granting the appropriate certification to accredit the putting into port and the reasons giving rise to this. Should there be no Maritime Authority or Consul, the statement must be made before the local authority.
- 9.^a To perform the necessary formalities before the competent authority to record the certification at the ship's Registry of the obligations he may contract pursuant to Article 583.
10. The proper safekeeping and custody of all the documents and belongings of any member of the crew who dies on board the ship, drawing up a detailed inventory, attended by witnesses from among the passengers, or failing that, the crew.
11. To comply in his conduct with the rules and principles set forth in the instructions by the shipping agent, being held responsible for anything he may do to the contrary.
12. To account to the shipping agent, from the port where the ship has put in, for the reason for her arrival, taking advantage of the available resources such as signal flags, telegraph, mail, etc., as appropriate; notify the cargo

he may have received, specifying the name and address of the consignors, cargo fees accrued and moneys he may have taken on bottomry; to notify him about her departure and all operations and data that may be of interest to him.

13. To comply with the rules on navigation lights and handling to avoid collisions.
14. To remain on board, in the event of hazard to the ship, until losing the last hope of saving her, and before abandoning ship, to listen to the ship's officers, abiding by what is decided by the majority; and if he has to take to the lifeboat, he shall ensure, above all, that he takes the books and papers with him, and then the objects of greatest value, and in the event of loss of the books and papers, he must then justify that he did everything he could to save them.
15. In the event of a shipwreck, to file a protest in the due manner, at the first port of arrival, before the competent authority or Spanish Consul, before twenty-four hours have elapsed, to which end he shall specify all the incidents of the shipwreck, according to the provisions of paragraph 8 of this Article.
16. To fulfil the obligations imposed by the Laws and Regulations on navigation, customs, health and others.¹⁸⁸

Article 613. The Master sailing under common or third charter may not perform any separate business on his own account and; if he were to do so, the profit obtained therefrom shall belong to the other parties concerned and the losses shall be borne by him personally.

¹⁸⁸ Article 612. See Article 618.5 of this Code.

N.1. See Article 578 of this Code. Take also into consideration Royal Decree 1,027/1989, on flag registration (Official State Gazette number 194, dated 15th August); Royal Decree 809/1999, amended by Ministerial Order dated 12th December 2001 (Official State Gazette number 305, dated 21st December), regulating the requisites that must be fulfilled by maritime equipment to be taken aboard ships.

N.2. See Article 634 of this Code; Regulation on Dispatch of Ships, approved by Ministerial Order dated 18th January 2000, cited. See Act 14/1986 dated 25th April (Official State Gazette dated 29th), General on Health, as well as Royal Decree 1,418/1986, dated 13th June (Official State Gazette dated 10th July), on exterior health.

See Articles 154 and 159 of the Regulations of the Business Registry Regulations and 14, 17 and 33 of the Naval Mortgage Act, cited. N.3. See Articles 33, 34, 35, 36 and 44 of this Code.

See order dated 6th March 1989 (Official State Gazette dated 13th March) on ships' logs, deck logs and engine room logs, amended by Order dated 30th June 1989 (Official State Gazette dated 1st July). Also, Articles 629 and 632.6 of this Code.

In addition to the mandatory books cited in this section and preceding ones, the following must be taken on board the ship:

"Labour Inspection Visits Book", according to the provisions of Article 103, of the Merchant Navy Labour Ordinance, approved the Order dated 20th May 1969 (Official State Gazette numbers 156 to 160 dated 1st to 5th July 1969).

"Loading and Unloading Resources Inspection Book", established by Order dated 24th February 1962 (in footnote to Article 2.13, Official State Gazette number 69, dated 21st March 1962).

"Hydrocarbons Register Book", for oil tankers equal to or greater than 150 tonnes gross, and for ships that are not oil tankers that consume hydrocarbons equal to or greater than 500 tonnes gross, as determined by Article 7 of the Order dated 30th December 1977, in application of Article IX of the International Convention dated 12th May 1954 (Official State Gazette 258, dated 28th October 1967).

"Drawings that must be carried on board ships", pursuant to the Order dated 13th June (Official State Gazette number 148).

"On Board Health Guide" for merchant and fishing vessels over 20 tonnes, whose crew has no doctor, pursuant to the Order dated 9th October 1978 (Official State Gazette number 272, dated 14th November).

N.4. See Royal Decree 1,837/2000, dated 10th November, which approves the Regulations on Inspection and Certification of Civil Ships, cited above.

N.5. See Royal Decree dated 27th March 1918 on carriage of hazardous goods (Gazette number 104, dated 4th April) and the Convention for the Safety of Life at Sea, dated 1st November 1974, ratified by the Instrument dated 16th August 1978 (Official State Gazette numbers 144, 145 and 146 dated 16th, 17th and 18th June 1980).

N.6. See Articles 102 to 104 of Act 27/1992 dated 24th November, on State Ports and the Merchant Navy (Official State Gazette number 283 dated 25th November), also Royal Decree 393/1996 dated 1st March, approving the General Regulations on Pilotage (Official State Gazette number 66 dated 16th March).

See also Article 834 of this Code

N.8. See Articles 822 and 953 of the Code of Commerce, 2,131 and 2,173 of the Civil Procedure Act 1881, and section 7 of the subsequent Article 618 of this Code. Also, see the footnote to the preceding Article 578, on intervention by Consuls.

N.9. See Article 154 of the Business Registry Regulations.

N.10. See Article 705 of this Code

N.11. See Article 610 of this Code

N.12. See the Signal flags Regulations approved by Royal Decree dated 16th January 1918 (Gazette number 41, dated 10th February 1918)

N.13. See Articles 826 and following of this Code.

N.15. See Articles 843 and 953 of this Code, 2,131 of the Civil Procedure Act 1881.

N.16. See Article 574 of this Code.

Article 614. The Master who, having arranged a voyage, does not fulfil his commission, unless by reason of a fortuitous accident or act of God or force majeure, shall compensate all damages caused by his behaviour, notwithstanding any criminal penalties that may be appropriate.¹⁸⁹

Article 615. Without consent from the shipping agent, the Master may not have any other person stand in for him and, if he were to do so, in addition to him becoming liable for all the actions performed by the substitute and being obliged to pay the compensation set out in the preceding Article, both of them may be dismissed by the shipping agent.¹⁹⁰

Article 616. If the stores and bunker fuel on board the ship were to be used up before reaching the port of destination, the Master may, in agreement with his officers, put into the nearest port, to restock either or both; but if there are persons on board who have their own supply of food, he may oblige them to hand it over for common consumption by all on board, paying their price right away or, at the latest, at the first port of arrival.¹⁹¹

Article 617. The Master may not take bottomry loans on the cargo and, if he were to do so, the contract shall not produce effects.

Nor may he take loans for his own negotiations on the ship, other than on the portion that he owns, provided that he has not previously taken a bottomry loan on the total sum, nor when there is any other kind of pledge or obligation upon the ship's cargo. When able to take them, he must necessarily state what his share in the ship is. In the event of this Article being infringed, the capital, interest accrued and costs shall be borne privately by the Master and the shipping agent may also dismiss him.¹⁹²

Article 618. The Master shall be civilly liable to the shipping agent; the latter shall be liable to the third parties who have entered into contracts with the former:

- 1.º For all damage suffered by the ship and her cargo due to lack of skill or carelessness on the Master's part. If a crime or offence is committed, the Criminal Code shall then apply;
- 2.º For pilfering or theft committed by the crew, notwithstanding the Master's right to take repeat action against the guilty party;
- 3.º For losses, fines and confiscations imposed due to breaches of the Laws and Regulations of the customs, police, health and navigation authorities;
- 4.º For damages and losses caused by discord arising aboard ship, or offences committed by the crew in serving and defending the ship, unless it is proven that the Master made full and appropriate use of all his authority for their prevention or avoidance;
- 5.º Those arising from misuse of the facilities and failure to abide by the relevant obligations pursuant to Articles 610 and 612;
- 6.º For those arising from having taken a route contrary to that which he should have taken, or due to having changed course without a proper reason, in the opinion of the board of officers on the ship, attended by the consignors or pursers present on board. No exception whatsoever shall exonerate him of this liability;
- 7.º For those arising from voluntarily entering into a port other than that of his destination, outside the cases, or without the formalities stated in Article 612.
- 8.º Those arising from failure to observe the specifications of the Regulations on location of lights and handling to avoid collisions.¹⁹³

¹⁸⁹ Article 614. See Articles 815 of this Code and 1,105 of the Spanish Civil Code.

¹⁹⁰ Article 615. See Articles 261, 262, 614 and 953 of the Code of Commerce.

¹⁹¹ Article 616. See Articles 809.5 and 6 of this Code and 2,161.10 of the Civil Procedure Act 1881.

¹⁹² Article 617. See Articles 611.5 and 8 and 719 and following of this Code.

¹⁹³ Article 618. N.2. See Article 703 of this Code.

N.8. See Articles 574, 586 and following, 610 and following and 826 and following of this Code.

Article 619. The Master shall be responsible for the cargo from the moment it is delivered on the dock or along side at the port of loading, until it is delivered on shore or on the dock at the port of unloading, unless there is a specific agreement to the contrary.¹⁹⁴

Article 620. The Master shall not be held liable for any damages caused to the ship or her cargo due to act of God or force majeure, but he shall always be liable, even when there are covenants providing otherwise, for those arising from his own failures.

Nor shall the Master be held personally liable for the obligations he may have contracted to attend to the repairs, fitting out or stocking of the ship, which shall befall the shipping agent, unless he has clearly committed himself personally or has signed a letter or promissory note in his own name.¹⁹⁵

Article 621. The Master who takes money on the hull, engines, rigging or equipment of the ship, or who pledges or sells merchandise or provisions, outside the cases and without the formalities foreseen in this Code, shall be held liable for the capital, accrued interest and costs, and shall compensate any damages whatsoever he may cause.

The Masters who commits fraud in his accounts shall reimburse the moneys embezzled and shall be subject to the provisions of the Criminal Code.

Article 622. If, while on a voyage, the Master were to receive notice of privateers or war ships having appeared against the country whose flag he is hoisting, he shall be obliged to put into the nearest neutral port, to report to his shipping agent or consignors, and to await the occasion to sail under escort, or for the danger to end, or to receive clear orders from the shipping agent or the consignors.¹⁹⁶

Article 623. If he comes to be attacked by a privateer and, after having attempted to avoid the encounter and having resisted delivery of the property on the ship or her cargo, these are violently seized from him, or if he finds it necessary to hand them over, he shall formalise an entry thereof in his cargo book and justify the facts before the competent authority, at the first port where he arrives.

When the act of God or force majeure is justified, he shall be exonerated of all liability.¹⁹⁷

Article 624. The Master who has gone through a storm or believes that damage or breakage has been suffered by the cargo, shall file a protest concerning this before the competent authority, at the first port of arrival, within twenty-four hours after his arrival, and he shall ratify it within the same period of time after arrival at his destination, immediately proceeding to justify the events, without being able to open the hatches until this has been verified.

The Master must proceed likewise if, in the event of his ship having been wrecked, he saves himself alone or with part of his crew, in which case he shall appear before the nearest authority, providing a sworn affidavit of the events.

The authority or Consul abroad shall check the events reported, receiving the sworn affidavit from the members of the crew and passengers who have been saved, and applying whatever other measures may lead to ascertaining the facts, inserting an attestation of what arises in the proceedings in the ship's logbook and in the pilotage log, and shall deliver the original sealed and numbered file to the Master, with a note of the folios, which he must stamp, to be presented to the Judge or Court of Law at the port of destination.

The affidavit by the Master shall provide final evidence if it matches those by the crew and passengers. If there is disagreement, the result of the content of the latter shall prevail, except for evidence to the contrary.¹⁹⁸

Article 625. As soon as he arrives at his port of destination, the Master, under his personal responsibility, shall obtain the necessary permission from the health authorities and customs and also fulfil the other formalities that the

¹⁹⁴ Article 619. See Article 625 of this Code. See also Article 1,102 of the Spanish Civil Code

¹⁹⁵ Article 620. See Articles 617 and 719 and following of this Code, also its Article 841.

¹⁹⁶ Article 622. See Articles 623, 677, 819 and 825 of this Code.

¹⁹⁷ Article 623. See Articles 612.3 of the Code of Commerce and 1,104 of the Spanish Civil Code, also see the rules cited in the preceding note.

¹⁹⁸ Article 624. See Articles 612.8 and 824 of the Code of Commerce. See Articles 612.15, 843 and 844 of this Code. See Articles 2,131 and 2,169 to 2,174 of the Civil Procedure Act 1881.

Regulations of the Administration establish, shall deliver the cargo, without embezzlement, to the consignees, and, if appropriate, the ship, rigging and charter fees to the shipping agent.

If, due to the absence of the consignee, or if the legitimate bearer of the bills of lading does not appear, the Master does not know to whom he must legitimately deliver the cargo, he shall then make it available to the Judge or Court of Law or relevant authority, in order for a decision be adopted on what is appropriate for its deposit, conservation and safekeeping.¹⁹⁹

SECTION 3^a On the officers and crew of the ship ^{*200}

Article 626. In order to be a Navigator, it shall be necessary:

- 1.º To fulfil the conditions established by the Maritime or Navigation Laws or Regulations;
- 2.º Not to be barred from performing the duties of his office according to these.

Article 627. The Navigator, as second mate in command of the vessel, while the shipping agent does not resolve otherwise, shall replace the Master in all cases of absence, illness or death, and then shall take on all his attributes, obligations and responsibilities.

Article 628. The Navigator must be equipped with the charts of the seas in which they are to sail, with the reckoning tables and instruments in use, that are necessary to perform his duties of office, being responsible for any accidents arising due to his omission on that part.²⁰¹

Article 629. The Navigator shall specifically and personally keep a book with numbered pages, stamped on all its sheets, called "Navigation Log", with a note at the beginning stating the number of pages it contains, signed by the competent authority, in which he shall keep a daily record of the distances, the courses sailed, the variation on the compass, the drift, direction and wind force, the state of the weather and sea, the sail area deployed, the sights taken on latitude and longitude, the number of furnaces lit, the steam pressure, the number of revolutions and, under the heading of Events, any handling manoeuvres carried out, other ships met and all other particulars and incidents rising during the navigation.²⁰²

Article 630. The Navigator shall agree with the Master any change in course and set the most convenient one for the ship to cover her route. If the Master objects, the Navigator shall make the appropriate remarks in the presence of the other sea officers. If the Master were to still refuse, the Navigator shall record the appropriate protest, signed by himself and by one of the officers, in the Navigation Log and shall obey the Master, who shall be the sole party responsible for the consequences of his orders.²⁰³

Article 631. The Navigator shall be held liable for all damages caused to the ship and her cargo due to his carelessness and lack of skill, notwithstanding his criminal liability, if a crime or offence is committed.

Article 632. The obligations of the Boatswain shall be:

- 1.ª To supervise the proper conservation of the hull and rigging of the ship and to take charge of the stores and equipment on her charge sheet, proposing the necessary repairs to the Master and replacement of any items and equipment damaged and removed;

¹⁹⁹ Article 625. See Articles 619, 653, 668 and 706 and following of this Code. Also, Articles 2,119 and following of the Civil Procedure Act 1881.

²⁰⁰ * See the note to title II on persons involved in maritime commerce, to which this section three and Article 310 of the Customs Ordinances belong (Official State Gazette 350, dated 16th December 1947).

²⁰¹ Article 628. See Articles 630 and 631 of this Code.

²⁰² Article 629. See Order dated 6th March 1989 (Official State Gazette dated 13th March), on ship log books, sea logs and engine room logs, amended by Order dated 30th June 1989 (Official State Gazette dated 1st July).

²⁰³ Article 630. See Articles 621.3 and 618.8 of this Code.

- 2.^a To ensure that the cargo is in good order, maintaining the ship expedited for handling;
- 3.^a To ensure order, discipline and good service by the crew, asking the Master for the appropriate orders and instructions, and providing him prompt notice of any event in which intervention by the authorities may be necessary;
- 4.^a To assign each seaman the tasks he must perform on board, according to the instructions received, and to ensure that they are performed punctually and precisely;
- 5.^a To take charge of the inventory of rigging and all the equipment on the vessel, if it were to be dissembled, unless the shipping agent has provided otherwise.

With regard to the engineers, the following rules shall apply:

- 1.^a In order to board as a naval Engineers as part of the crew of a vessel in the merchant navy, it shall be necessary to fulfil the conditions that the Laws and Regulations establish and not to be barred from office pursuant to these. Engineers shall be considered officers of the ship, but they shall not exercise command or intervention, except with regard to the engine appliance.
- 2.^a When there are two or more Engineers on board a ship, one of them shall act as Head Engineer, and the other Engineers and all the engine room staff shall be under his orders. In addition to having the engine under his charge, he shall also oversee the spare parts, instruments and tools related to these, the bunker fuel, lubrication materials and everything else on board falling under the responsibility of the Engineer.
- 3.^a He shall attend the engines and boilers in a good state of conservation and cleanliness, and shall provide whatever is convenient in order to ensure they are always ready to operate in a regular manner, being responsible for accidents or failures that may be caused to the engine, ship and cargo due to his carelessness or lack of skill, notwithstanding any criminal liability that may arise if the commission of a criminal or petty offence is proven.
- 4.^a He shall not undertake any modification to the engine, nor shall proceed to repair the breakages he may have noticed in it, nor shall he alter the normal regime of its running without the prior authorisation of the Master and, should he oppose these being performed, shall make to him the appropriate remarks in the presence of the other Engineers or other Officers and, if in spite of this, the Master still refuses, the Engineer shall make the appropriate protest, recording this in the engine room log, and shall obey the Master, who shall be the sole party responsible for the consequences of his decision.
- 5.^a He shall report to the Master on any breakage of the engine, and shall notify him when the engines need to be stopped for any period of time or if any accidents happens in his area of responsibility of which the Master must have immediate news, also frequently notifying him about the consumption of bunker fuel and lubrication materials.
- 6.^a He shall keep a book or record called "Engine Log" in which he shall annotate all the data related to work on the engines, such as, for example, the number of furnaces lit, the steam pressure in the boilers and cylinders, the vacuum in the condenser, the temperatures, the degree of saturation of the water in the boilers, the consumption of bunker fuel and lubricant materials and, under the heading of notable incidents, any failures and deterioration of the engines and boilers, the causes of these and the means used to repair them. Data shall also be taken from the "Navigation Log" to state the force and direction of the wind, the rigging extended and the distance covered by the ship.²⁰⁴

Article 633. The Boatswain shall take charge of the ship in the event of the Master and Navigator being incapacitated, taking on their powers and responsibility.²⁰⁵

²⁰⁴ Article 632. See Article 24 of the Labour Ordinance of the Merchant Navy dated 20th May 1969, cited above.

Articles 18, 19 and 24 of the Labour Ordinance of the Merchant Navy with regard to section two, regarding Engine personnel.

N.4. See Article 630 of this Code.

N.6. See Articles 612.3 and 629 of this Code.

²⁰⁵ Article 633. See Articles 610 and following and 627 of this Code.

Article 634. The Master may form the crew of his ship with the number of men he may consider convenient and, should no Spanish seafarers be available, he may then enrol aliens resident in the country, without their number exceeding one fifth of the crew. Should the Master not find a sufficient number of nationals to enrol as crew in foreign ports, he may make up the crew with aliens, with the consent of the Consul or Maritime Authorities.

The contracts that the Master enters into with the members of the crew and others staffing the ship, to which reference is made in Article 612, must be recorded in writing in the accounting book, without intervention by the Notary Public or scribe being required, signed by the parties to it and approved by the Maritime Authority, if drawn up in Spanish territory, or by Consuls or Consular officers of Spain if performed abroad, that shall list all the obligations contracted by each party and all the rights acquired; the relevant authorities must ensure that these obligations and rights are recorded in a clear and unambiguous manner and do not give rise to doubts or claims.

The Master shall ensure he reads them the Articles of this Code that concern them, mentioning that reading in the actual document.

The book must fulfil the provisions set out in Article 612 and there must be no sign of alteration of its entries, and it shall record matters arising between the Master and the crew in relation to the contracts set forth therein and the moneys delivered on account of these.

Each member of the crew may demand a copy of the contract from the Master, signed by him, and of the settlement of his dues, just as set forth in the book.²⁰⁶

Article 635. Seafarers hired to serve on a ship may not terminate their employment, nor cease to fulfil their duties, except due to a legitimate impediment that may have arisen.

Nor may they transfer from the service of one ship to another without obtaining the written leave of the Master of the ship on which they are enrolled.

If, not having obtained that leave, the seafarer hired on a ship enrolls on another, the second contract shall be void and the Master may choose between forcing him to fulfil the service he was first bound to, or seek someone to replace him at the seafarer's expense.

He shall also forfeit any salaries accrued in his first employment, in favour of the ship on which he was hired.

A Master who knows that a seafarer is in the service of another ship but hires him again without demanding the leave referred to in the preceding paragraphs, shall be held liable to the vessel to which the seafarer first belonged, under subsidiary terms, for the part he is unable to pay of the compensation concerned in paragraph three of this Article.²⁰⁷

Article 636. If there is no record of the period of time for which the seafarer enrolled, he may not be dismissed until conclusion of the return voyage to the port of registration.²⁰⁸

Article 637. The Master may not dismiss the seafarer during his contract, except for a fair cause, of which any of the following shall be considered as such:

- 1.^a The commission of an offence that disturbs the peace on the ship;
- 2.^a Repeated offences of subordination, lack of discipline or in fulfilment of service;
- 3.^a Reiterated ineptness and negligence in fulfilment of the service he must provide;
- 4.^a Habitual drunkenness;

²⁰⁶ Article 634. See Articles 31 to 48 of the Labour Ordinance dated 20th May 1969.

See also Article 648 of this Code.

On intervention by Consuls, see note on Article 578 of this Code.

See Article 612.3 of this Code.

²⁰⁷ Article 635. See Article 647 of this Code. Article 91 of the Merchant Navy Labour Ordinance, cited.

²⁰⁸ Article 636. Take into consideration Article 95 of the Merchant Navy Labour Ordinance. See Article 604.

5.^a Any event that incapacitates the seaman to perform the work he is commissioned to do, except as provided in Article 644;.

6.^a Desertion.

Notwithstanding this, before commencing the voyage, the Master, without having to provide any reason whatsoever, may refuse to accept a seafarer he has enrolled on board, leaving him ashore, in which case he must pay him his salary as if he had served aboard.

That compensation shall be drawn from the ship's funds if the Master has acted for the purposes of caution and in the interest of her safety and proper service. If this is not the case, the Master shall settle this himself.

Once the vessel has set sail, during the voyage and until its conclusion, the Master may not abandon any member of his crew on land or at sea, unless he is charged with a crime and must be imprisoned, being delivered to the competent authority at the first port of arrival, this being compulsory for the Master.²⁰⁹

Article 638. If, once the crew is hired, the voyage were to be cancelled due to the will of the shipping agent or the charterers, before or after the ship has set sail, or if the ship were to be given a different destination to that determined in the crew enrolment, they shall be compensated for termination of the contract, according to the cases, that is:

- 1.^o If cancellation of the voyage were to be decided before the ship leaves the port, each one of the seamen enrolled shall be given one month of their respective salaries, as well as those that they are due to receive, according to their contracts, for the service provided on the ship until the date of the cancellation;
- 2.^o If the enrolment was for a lump sum for the whole voyage, the proportional amount of that monthly salary and per diems shall be calculated according to the approximate days that should have lasted, in the opinion of appraisers, in the manner established in the Civil Procedure Act; and if the voyage planned were so short that it is calculated to be approximately one month, the compensation shall be set at 15 days, subtracting all moneys advanced in all cases;
- 3.^o If the cancellation takes place once the ship has set sail, the men enrolled for a lump sum for the voyage shall be owed the full salary they were offered, as if the voyage had ended; and those hired on a salary shall receive the appropriate dues for the time they have been aboard and for that required to reach the port where the voyage was due to end; and the Master must also provide one and another passage to the same port, or to that from which the voyage originated, as they see fit;
- 4.^o If the shipping agent or the Shippers were to give the ship a different destination to that established in the enrolment, and if the members of the crew do not give their consent, they shall be paid half what is established in the first case in compensation, in addition to being owed the relevant salary for the days elapsed from their enrolment.

If they were to accept the alteration and the voyage, and if, due to the greater distance, or to other circumstances, an increase in remuneration were to arise, it shall be settled privately, or by amicable referees in the event of dispute. Although the voyage is limited to a nearer destination, no lowering whatsoever of the salary agreed shall be effected for this reason.

If the cancellation or alteration of the voyage were to be due to the consignors or charterers, the shipping agent shall be entitled to claim fair compensation from them.²¹⁰

Article 639. If the cancellation of the voyage was due to a just cause beyond the control of the shipping agent and consignors, and if the ship has not left port, the members of the crew shall not be entitled to compensation other than to be paid the salaries accrued up to the date of cancellation.²¹¹

²⁰⁹ Article 637. See Article 177 of the Merchant Navy Labour Ordinance. Also, see Article 605 of this Code.

In paragraph two, Article 603 of this Code.

²¹⁰ Article 638. See Article 97 of the Labour Ordinance dated 20th May 1969.

With regard to the penultimate paragraph see, on arbitration, the Act dated 5th December 1988 (Official State Gazette number 293, dated 7th December).

²¹¹ Article 639. See Article 97.1 of the Merchant Navy Labour Ordinance.

Article 640. The following shall be just causes to cancel the voyage:

- 1.^a Declaration of war or prohibition on trading with the country to whose territory the ship is to sail;
- 2.^a The state of blockade of the destination port, or an epidemic that arises after the enrolment;
- 3.^a Prohibition of receipt of the goods forming the ship's cargo at that port;
- 4.^a Detention or embargo thereof by the Government, or due to another cause beyond the control of the shipping agent;
- 5.^a The ship being declared unseaworthy.²¹²

Article 641. If any of the first three causes stated in the preceding Article arises after the ship has set sail, the seamen shall be paid off at the port where the Master sees fit to put in for the benefit of the ship and cargo, according to the time they have served on it; although if the ship is to continue her voyage, the Master and crew may mutually require each other to fulfil the contract.

Should the fourth cause arise, the crew shall continue to be paid half their dues, if the enrolment is by months; but if the detention were to exceed three, the venture shall be terminated, paying the crew the moneys they would have received according to their contract, on conclusion of the voyage. Moreover, if enrolled for a lump sum for the voyage, the contract must be honoured under the terms agreed.

In the fifth case, the crew shall have no entitlement other than to collect the salaries accrued; although if disablement of the ship arises due to carelessness or lack of skill by the Master, the Engine Officer or Navigator, they shall compensate the crew for the damages suffered, notwithstanding any criminal liability that may apply.²¹³

Article 642. If the crew is sailing on a share basis, they shall not be entitled to anything other than the proportional part due in compensation from the ship's common fund from the parties responsible for the events, in the case of cancellation, delay or a longer voyage.

Article 643. If the ship and her cargo were to be totally lost due to seizure or shipwreck, all the rights shall be extinguished, both that of the crew to claim any salaries and that of the shipping agent to reimbursement of the advances made.

If any part of the ship or cargo is salvaged, or one and the other, the crew on salary, including the Master, shall conserve their right to the salvage, to the necessary extent, both of the remains of the ship as well as of the sum of the carriage fees due for any cargo so salvaged. However, seafarers sailing for a share in the cargo fees shall not have any entitlement to the salvage of the hull, except for any part of the cargo salvaged. If they have worked to gather up the remains from the shipwreck, they shall be paid a proportional gratification on the basis of the value of the goods salvaged and their effort and risk involved in achieving the salvage.²¹⁴

Article 644. Seafarers who fall ill shall not lose their entitlement to salary during the voyage, unless the illness is due to an act for which they are responsible. In any case, the expense of care and cure shall be settled from the common fund, as a reimbursable expense.²¹⁵

If the illness is due to injury in the service or defence of the ship, the seafarer shall be cared for and cured from the common fund, deducting the expenses of care and cure from the cargo carriage fees.

²¹² Article 640. See Articles 647 and 690 of this Code. Take into consideration Article 93 of the Labour Ordinance dated 20th May 1969.

²¹³ Article 641. See Article 97.1 of the Merchant Navy Labour Ordinance.

²¹⁴ Article 643. See Article 97.1 of the Merchant Navy Labour Ordinance dated 20th May 1969. Also, see Articles 840 and following of this Code.

²¹⁵ Article 644. See Article 637.5 of this Code. Also, see Articles 167 to 172 of the Labour Ordinance dated 20th May 1969. Also take into consideration Decree 2,864/1974 dated 30th August (Official State Gazette number 243, dated 10th October), that regulates the Special Social Security Regime for Workers at Sea (and its applicable Regulations approved by Decree 1,867/1970, dated 4th July (Official State Gazette number 165, dated 11th July).

Article 645. If a seafarer dies at sea, his heirs shall be paid what he has earned and not received of his dues, according to the enrolment and circumstances of death, that is: if death due to natural causes when on salary, he shall be paid the moneys accrued up to the date of death.

If enrolled for a lump sum per voyage, he shall be entitled to half the sum accrued if the seafarer died on the outward voyage, and the full sum if homeward bound.

If enrolled on a share and the death occurs after the voyage has commenced, the heirs shall be paid the whole part due to the seafarer. However, if he dies before the ship leaves port, the heirs shall not be entitled to any claim whatsoever.

If the death occurs in defence of the ship, the seaman shall be considered alive and, on conclusion of the voyage, his heirs shall be paid the full salary or full part of his entitlements, as well as the others of that kind.²¹⁶

Likewise, a seaman taken prisoner defending the ship shall be considered to be present, enjoying the same benefits as the others; but if this occurs due to carelessness or another incident unrelated to the service, he shall only receive the salaries owed up to the date he is taken prisoner.

Article 646. The ship, with her engines, rigging, equipment and cargo shall guarantee the liability for salaries accrued by the crew on salary or by voyage, and their settlement and payment must be performed in the interval between one expedition and another.

Should a new expedition commence, they shall lose the preference of credits of that class from the previous one.²¹⁷

Article 647. The officers and crew of the ship shall be relieved of all commitment, if they deem it appropriate, in the following cases:

- 1.º If, before the voyage begins, the Master attempts to change route, or if maritime war is declared with the country in which the ship has her destination;
- 2.º If an epidemic arises or is officially declared at the port of destination;
- 3.º If the ship were to change owner or Master.²¹⁸

Article 648. The crew of a ship shall be understood to include the set of members on board, from Master to ship's boy, necessary for her command, handling and service and, thus, the enrolled crew shall include the Navigators, Engineers, boiler men and other unspecified posts on board; but shall not include the passengers or persons the ship is transporting.²¹⁹

SECTION 4. On pursers

Article 649. Pursers shall perform the administrative duties on board that they are entrusted by the shipping agent or the consignors; shall keep the accounts and records of her operations in a book that shall fulfil the same conditions and requisites as those required of the accounting ones kept by the Master, whom they shall respect in his attributions as master of the vessel.

The powers and responsibilities of the Master cease in the presence of the purser, with regard to the administrative duties legitimately conferred to the latter, subsisting for all formalities that are inseparable from his authority and post.²²⁰

²¹⁶ Article 645. See the Merchant Navy Labour Ordinance.

²¹⁷ Article 646. See Articles 580.6, 584, 643 and 913.1 and 2 of this Code.

²¹⁸ Article 647. See Articles 635 of this Code. Also, see Article 91 of the Labour Ordinance dated 20th May 1969.

²¹⁹ Article 648. See Article 634 of this Code. Take into consideration Article 3.2 of the Merchant Navy Labour Ordinance.

²²⁰ Article 649. See Article 612.3 of this Code. Also, see Article 21 of the Labour Ordinance dated 20th May 1969.

Article 650. All the provisions set forth in Section 2, Title III, Book II, on capacity, means of hiring and liability of factors shall be applicable to pursers.²²¹

Article 651. Without specific authorisation or agreement, pursers may not perform any business on their own account during their voyage, apart from that of the venture that, by custom of the port where the ship is dispatched, they are allowed.

Nor may they invest more than the product of that venture in the return trip, unless they have specific authorisation from the principals.²²²

TITLE III

On special maritime commerce contracts^{*223}

SECTION ONE. On charter contracts

1. On the forms and effects of the charter contract

Article 652. The charter contract must be issued in duplicate on a policy signed by the parties to the contract, and if a party does not know how to sign or cannot, by two witnesses at his request.

The charter policy shall also contain, in addition to the freely stipulated conditions, the following particulars:

- 1.^a The class, name and tonnage of the ship;
- 2.^a Her flag and port of registration;
- 3.^a The name, surname and address of the Master;
- 4.^a The name, surname and address of the shipping agent, if he contracts the charter;
- 5.^a The name, surname and address of the charterer, if he declares he is under commission by the person on behalf of whom he enters into the contract;
- 6.^a The port of loading and unloading;
- 7.^a The hold capacity, tonnage or amount of weight or measurement respectively bound to load and carry, or if total charter;
- 8.^a The charter fees due, stating whether it is a lump sum for the voyage, or an sum per month, or for the holds to be occupied, or for the weight or measure for the goods the cargo consists of, or any other means agreed;
- 9.^a The primage that the Master is to be paid;
10. The days agreed for loading and unloading;
11. The lay times and demurrage days to be counted, and what must be paid for each one of them.²²⁴

²²¹ Article 650. See Articles 281 to 302 of this Code.

²²² Article 651. See Article 388 of this Code.

²²³ * See Royal Decree 720/1984 dated 28th March (Official State Gazette 89, dated 13th April) on the organization of Regular Maritime Transport.

²²⁴ Article 652. N.8. On charter accrual, see Articles 658 and following of this Code.

N.10. See Article 656 of this Code

Article 653. If the cargo is received without having signed the policy, the contract shall be understood to have been entered into on the basis of the content of the bill of lading, the sole title, with regard to loading, to set the rights and obligations of the shipping agent, of the Master and charterer.²²⁵

Article 654. Charter policies entered into with intervention by the broker certifying the authenticity of the contractors' signatures, due to their having been placed thereto in his presence, shall be deemed definitive evidence in Court, and if there is disagreement between them, what the broker must keep on his records shall prevail, provided that it fulfils the legal requisites.

The policies shall also be considered a valid record, even when a broker has not intervened, provided that the parties to the contract recognise the signatures placed thereon to be their own.

If a broker does not intervene in the charter and the signatures are not recognised, any doubts shall be decided by what is set forth in the bill of lading and, failing that, from the evidence provided by the parties.²²⁶

Article 655. The charter contracts entered into by the Master in the absence of the shipping agent shall be valid and effective even when, on entering into them, he may have acted in breach of the orders and instructions given by the shipping agent or shipper; but they shall be entitled to take action against the Master to claim compensation for damages.²²⁷

Article 656. If the charter policy does not state the periods of time within which loading and unloading are to be performed, the practice in the port where the operations are performed shall apply. Once the period stipulated or the usual one has elapsed, if the charter contract does not contain a specific clause setting the compensation for delays, the Master shall be entitled to claim the lay-days and demurrage days elapsed in loading and unloading.²²⁸

Article 657. If the ship were to be disabled during the voyage, the Master shall be obliged to charter another one in a seaworthy condition at his expense, to receive the cargo and to carry it to its destination, to which end he shall be obliged to seek a ship not only in the port into which he has put, but also in those around it up to a distance of 150 kilometres.

If, due to indolence or malice, the Master does not provide a ship to carry the cargo to its destination, the consignors, following a demand issued to the Master requiring him to find a charter vessel within a non-extendable period of time, may then contract out the charter by resorting to the judicial authority to apply for summary approval of the contract they have entered into.

That same authority shall urgently call on the Master to perform the charter on the terms entered into by the consignors, on his account and under his responsibility. If the Master, in spite of his diligence, does not find a ship to charter, he shall place the cargo in deposit and available to the consignors, to whom he shall report what has happened at the first opportunity that arises and, in these cases, the charter shall be according to the distance the ship has covered, without entitlement to any compensation whatsoever.²²⁹

Article 658. The carriage fees shall be accrued according to the terms stipulated in the contract and, if these are not specific, or are doubtful, the following rules shall apply.

- 1.^a When the ship is chartered by months or days, the charter fees shall begin to accrue from the date on which the ship is loaded;
- 2.^a On charters for a specific period of time, the charter fees shall begin to accrue from that same day;

N.11. See Article 1,420.6 of the Civil Procedure Act of 1881.

²²⁵ Article 653. See Articles 612.1 and 706 to 718 of this Code, as well as Articles 2 and 4 of the Act dated 22nd December 1949, regulating bills of lading in international carriage of goods (Official State Gazette number 358, dated 24th December).

²²⁶ Article 654. See Articles 55, 58, 93, 113, 114 and 115 of this Code. Also see Articles 6 and 10 of the Organic Royal Decree on the Corps of Maritime Interpreter Brokers, dated 8th July 1930 (Gazette number 195 dated 14th July), and 31, 34 and following of the Regulation on Maritime Interpreter Brokers, dated 30th November 1933 (Gazette number 340, dated 6th December). Also, see Articles 57 and 59 of this Code.

²²⁷ Article 655. See Articles 610.4 and 612.12 of this Code.

²²⁸ Article 656. See Articles 652.11 and 675 of this Code and 2,119 of the Civil Procedure Act of 1881.

²²⁹ Article 657. See Articles 676 and 688.5 of this Code.

3.^a If the carriage fees are by weight, payment shall be made by gross weight, including the packaging, barrels or any other object in which the cargo is contained.²³⁰

Article 659. The goods sold by the Master to attend to the indispensable repair of the hull, engines or rigging, or for unavoidable and urgent needs, shall accrue carriage fees.

The price of these goods shall be set according to the success of the expedition, that is:

1.^o If the ship safely reaches the destination port, the Master shall pay them at the price obtained for those of the same class as those sold;

2.^o If the ship is lost, at that which would have been obtained from sale of the goods.

The same rule shall be observed for payment of the carriage fees, that shall be full if the ship reaches her destination, and in proportion to the distance covered, if lost beforehand.²³¹

Article 660. No charter fees shall accrue on goods jettisoned due to common salvage; although their sum shall be considered as a general average, this being calculated in proportion to the distance covered when jettisoned.²³²

Article 661. Nor shall carriage fees be accrued on goods lost due to shipwreck or running aground, nor those seized by pirates or enemies.

If the carriage fees have been charged in advance, they shall be returned, unless there is a clause to the contrary.²³³

Article 662. If the ship or goods are salvaged, or if the goods are salvaged from the shipwreck, the relevant carriage shall be paid for the distance covered by the ship with the cargo on board; and if, once repaired, she carries the cargo to the destination port, the full carriage shall be paid, notwithstanding the relevant average claims.²³⁴

Article 663. Goods that suffer deterioration or shrinkage due to inherent flaws or bad quality and condition of the packaging, or for fortuitous causes, shall accrue the full carriage fees, just as stipulated in the charter contract.²³⁵

Article 664. Natural increase in the weight or measurement of the freight loaded on the ship shall inure to the benefit of the owner thereof and the relevant carriage fees set in their contract shall accrue.²³⁶

Article 665. The cargo shall be considered specially encumbered for payment of carriage fees, expenses and rights arising therefrom that must be reimbursed by the consignors, and of the part that may be due in general average; however it shall not be licit for the Master to delay the unloading due to suspicion that this obligation might not be honoured.²³⁷

If there were a motive for mistrust, the Judge or Court of Law, on petition by the Master, may order the freight to be deposited until these are fully reimbursed.

²³⁰ Article 658. See Articles 578.3 and 4 of this Code and 2,119 to 2,127 of the Civil Procedure Act of 1881. See Article 652.8 of this Code. On the prescription of actions related to charter fee collection, see Article 951 of this Code.

²³¹ Article 659. See Articles 611.5 and 620 of the Code of Commerce
N.2. See Article 580.7 of this Code.

N.3. See Article 666 of this Code.

²³² Article 660. See Articles 811.2 and 854.5 of this Code.

²³³ Article 661. See Articles 643, 662 and 840 and following of this Code.

²³⁴ Article 662. See the previous Article and Articles 643, 659 and 840 and following of this Code.

²³⁵ Article 663. See Articles 687 of this Code and 1,105 of the Spanish Civil Code.

²³⁶ Article 664. See Articles 353 and 356 of the Spanish Civil Code.

²³⁷ Article 665. See Articles 375, 666, 667, 668, 678, 686 and 687 of the Code of Commerce and 2,119 to 2,127 of the Civil Procedure Act of 1881. Also, see Article 2,158 of the Civil Procedure Act of 1881, which cites Article 794 of the Code of Commerce of 1829, the text of which fully matches that of this Article.

Article 666. The Master may request sale of the cargo in the necessary proportion to pay the carriage fees, expenses and claims due to him, reserving the right to claim the remainder owed to him for these items, if the product of the sale does not suffice to cover his credit.²³⁸

Article 667. The goods loaded shall preferentially be assigned to the liability of their carriage and expenses for 20 days, as of their delivery or deposit. During that term, their sale may be requested, although there may be other creditors and in the event of the bankruptcy of the consignor or consignee.

However, this right may not be exercised on goods that have been transferred to a third party after their delivery, for a consideration and without malice by that party.²³⁹

Article 668. Should the consignee not be found, or refuse to receive the cargo, the Judge or Court of Law, on petition by the Master, may decree its deposit and order its sale as necessary to pay the carriage and other expenses upon it.

Sale shall also take place when the goods deposited are at risk of deterioration or, due to their conditions or other circumstances, the conservation and custody expenses are disproportionate.²⁴⁰

2.º On the rights and obligations of the Shipper^{*241}

Article 669. The Shipper or Master shall abide, in charter contracts, by the capacity the ship has, or that specifically declared on her registration, and no more than a 2 per cent difference shall be tolerated between that declared and the real amount.

If the Shipper or the Master contractually takes on more cargo than the ship may carry, according to her tonnage, they shall compensate the consignors whose contract they fail to honour for the damages that their failure to fulfil this has caused them, as appropriate, that is:

If the vessel is chartered by a sole consignor and an error or deceit is found in the amount and the charterer does not opt for cancellation, when entitled to this, the carriage fee shall be reduced in proportion to the load the ship ceases to receive, and the Shipper must also compensate the charterer for the damages he has caused him;

If, on the contrary, there are several charter contracts, and due to lack of space, not all the contractual cargo may be loaded, and none of the charterers were to opt to cancel, preference shall be given to those who have their cargo boarded and stacked on board, and the others shall obtain space according to the dates of their contracts;

Should that priority not be established, they may be loaded, if convenient for the charterers, in proportion to quantities of weight or extension that each one has contracted, and the Shipper shall be obliged to compensate damages and losses.²⁴²

Article 670. If the Shipper has received a part of the cargo and does not find the missing cargo so as to make up at least three fifths of what the ship may carry, at the price he may have set, he may transfer this for carriage to another ship that has been inspected and declared fit for the same voyage, for which he shall bear the expenses of trans-shipping and the increase, if any, in the carriage fees. If that substitution were not possible, the ship shall set sail within the agreed period of time; and if there is none, within 15 days of loading having commenced, if there is no stipulation otherwise.

If the owner of the loaded cargo locates additional cargo at the same prices and with equal or proportionate conditions to those accepted on receipt, the Shipper or Master may not refuse to accept the additional cargo; and if

²³⁸ Article 666. See the previous Article and Articles 667 and 668 of this Code and 2,161.11 of the Civil Procedure Act of 1881.

²³⁹ Article 667. See Articles 580.10, 665, 666, 668 and 913.2 of the Code of Commerce. 2,161.11 of the Civil Procedure Act of 1881. Also Articles 374, 375 and 376 of the Code of Commerce.

²⁴⁰ Article 668. Also, see Articles 665 to 667 of the Code of Commerce and 2,119 and following. Also, see Articles 362 and 369 of this Code.

²⁴¹ * See Articles 652.7, 673, 676 regarding carriage obligations; with regard to delivery obligations, see Articles 656 and 668; in relation to accessory obligations, see Articles 612.5 (proper stacking), 618.6 and 7 (agreed route), 619 (custody of goods loaded), 669 (loading limits) and 672 (non-reception of other goods). All the principles cited in the Code of Commerce.

²⁴² Article 669. See Article 2,168 of the Civil Procedure Act of 1881.

any objections are raised, the consignor shall then be entitled to demand that the ship sets sail with the cargo that she has on board.²⁴³

Article 671. Once three fifths of the ship has been loaded, the Shipper may not substitute that designated in the contract with another without the consent of the charterers or consignors, under the penalty of being held liable for all the damages and losses to the cargo of those who have not consented substitution during the voyage.²⁴⁴

Article 672. When a whole ship is chartered, the Master may not receive cargo from any other person without permission from the charterer; and if he does so, that charterer may oblige him to unload it and to compensate him for any losses arising therefrom.²⁴⁵

Article 673. The Shipper shall bear all the losses caused to the charterer due to voluntary delay by the Master in setting sail, according to the set rules, provided that a Notary Public or court order requires him to set sail within the appropriate period of time.

Article 674. If the charterer were to carry more cargo on board the ship than specified in the contract, he may be allowed the surplus cargo according to the price stipulated in the contract, that may be properly stacked without harming the other consignors; but if its placement were to detract from proper stacking conditions, the Master must reject or unload it, at the owner's expense.²⁴⁶

Likewise, before leaving port, the Master may have the freight clandestinely boarded taken ashore, or carry it, if it may be properly stacked, for which he shall demand the highest carriage fee agreed on that voyage.

Article 675. If the ship is chartered to receive cargo at another port, the Master shall contact the consignee stated in his contract; and if this does not deliver the cargo to him, he shall notify the charterer, whose instructions he shall await, with the agreed lay days or usual ones in that port accruing meanwhile, if there is no specific clause to the contrary.

If the Master does not receive an answer within the necessary term for that purpose, he shall proceed to seek cargo and, if he does not find it after the lay days and demurrage elapses, he shall formalise a protest and return to the port where the charter was taken on.

The charterer shall pay the full charter fees, subtracting that accrued on the goods that have been transported on the outward and homebound voyages, if loaded on account of third parties.

The same shall apply when the ship chartered return is not able to take return cargo.²⁴⁷

Article 676. The Master shall lose the charter fees and compensate the consignors whenever these prove, even against the inspection certificate, if performed at the port of departure, that the ship was not seaworthy on receipt of the cargo.²⁴⁸

Article 677. The charter contract shall subsist if, while the Master lacks instructions from the charterer, war or blockade is declared while sailing.

In that case, the Master must head for the nearest safe neutral port, requesting and awaiting orders from the consignor, and the expenses and salaries accrued during the detention shall be paid as a common average.

If the consignor provides that unloading be performed in the port of arrival, the full return charter fee shall accrue.²⁴⁹

²⁴³ Article 670. See Article 2,168 of the Civil Procedure Act of 1881.

²⁴⁴ Article 671. See note on previous Article.

²⁴⁵ Article 672. See Articles 679 and following of this Code.

²⁴⁶ Article 674. See Article 2,168 of the Civil Procedure Act of 1881.

²⁴⁷ Article 675. See Articles 612.5, 652, 656, 680 of the Code of Commerce and 2,119 of the Civil Procedure Act of 1881.

²⁴⁸ Article 676. See Articles 612.4 of the Code of Commerce.

²⁴⁹ Article 677. See Articles 622, 690, 692, 755.10, 767, 811, 819, 821 and 825 of the Code of Commerce. See Articles 655 and following of this Code and 2,119 and following and 2,161 of the Civil Procedure Act of 1881.

Article 678. If the necessary period of time to receive orders from the consignor has elapsed, in the opinion of the Judge or Court of Law, and the Master continues to lack instructions, the cargo shall be deposited as a lien for payment of the carriage fees and expense of the cargo in delay, which shall be settled from the revenue obtained from the part first sold.

3.º On the obligations of the charterer

Article 679. The charterer of a whole ship may wholly or partially subrogate the carriage under the terms most convenient to him, without the Master being able to refuse to receive the cargo delivered by the second charterers on board, provided the conditions of the first charter are not altered, and that the owner is paid the whole price agreed, even when all the cargo is not boarded, with the limitation established in the following Article:

Article 680. Should the charterer not make up the whole amount of cargo he undertook to load, he shall pay the carriage of that which he has not loaded, unless the Master has taken another cargo to complete the loading of the ship, in which case the first charterer shall pay the differences if any.²⁵⁰

Article 681. If the charterer loads different goods to those he declared at the time of arranging carriage, without the knowledge of the Shipper or Master, thus giving rise to losses due to confiscation, embargo, detention or others, to the Shipper or the consignors, the party causing these shall be held liable, with the value of that cargo, and also with his assets, for full compensation to all the parties damaged by his actions.

Article 682. If the freight loaded is for the purpose of illicit commerce and it has been taken aboard with the knowledge of the Shipper or the Master, these, jointly and severally with their owner, shall be held liable for all damages the other consignors are caused; and even if agreed otherwise, they may not demand any compensation whatsoever from the charterer for damage to the ship.²⁵¹

Article 683. In the event of putting into port to repair the hull, engines or rigging of the ship, the consignors must await until the ship is repaired, being able to unload it at their expense if they see fit.

If the consignors, the Court of Law, Consul or competent authority in the foreign country decide to unload the freight, to benefit a cargo exposed to deterioration, the unloading and reloading expenses shall be borne by the former.²⁵²

Article 684. If, without there being any of the causes of force majeure stated in the preceding Article, the charterer were to wish to unload his freight before reaching its destination port, he shall pay the full carriage, the expenses of putting into port at his request, and the damages and losses caused to the other consignors, if any.

Article 685. When general cargo is carried, any of the consignors may unload the freight before the voyage begins, paying half the carriage, the stacking and re-stacking costs and any other loss to the other consignors arising for that reason.²⁵³

Article 686. Once unloading and making the cargo available to the consignee, has taken place, he must immediately pay the Master the carriage due and other expenses for which that cargo is held liable.²⁵⁴

The primage must be paid in the same proportion and time as the carriage, in which all alterations or amendments to which this is subject shall apply.

Article 687. Charterers and consignors may not abandon merchandise deteriorated by internal flaw or fortuitous event to pay carriage and other expenses.

²⁵⁰ Article 680. See Articles 652.7 and 679 of the Code of Commerce.

²⁵¹ Article 682. See Articles 53 and 706.6 of the Code of Commerce.

²⁵² Article 683. See Articles 684, 688.5 and 822 and following of this Code and 2,147 to 2,150 of the Civil Procedure Act of 1881.

²⁵³ Article 685. See Articles 2.151 and 2,152 of the Civil Procedure Act of 1881.

²⁵⁴ Article 686. See Articles 652.8 and 9 and 655 and following of this Code.

However, abandonment shall be appropriate if the cargo consists of liquids and these have been spilled, there being no more than a quarter of their content inside the containers.²⁵⁵

4.º On total or partial rescission of the charter contract

Article 688. The charter contract may be rescinded at the request of the charterer:

- 1.º If he were to abandon the charter before the ship is loaded, by paying half the carriage agreed;
- 2.º If the capacity of the ship does not match that recorded on the tonnage certificate, or if there was an error in statement of the flag under which she sails;
- 3.º If the ship is not made available to the charterer within the period of time and in the manner agreed;
- 4.º If, once the ship has set sail, she returns to the port of departure due to the risk of pirates, enemies or adverse weather, and the consignors agree to unload her.

In the second and third cases, the Shipper shall compensate the charterer for the damages he has caused.

In the fourth case, the Shipper shall be entitled to the full carriage fee for the onwards voyage.

If the charter is contracted by months, the charterers shall pay the full sum of one month, when the voyage is to a port in the same sea, and two if to a different sea.

Only one month shall be paid from one port to another in Mainland Spain and the adjoining islands.

- 5.º If the ship were put into a port for urgent repairs during a voyage and the charterers prefer to dispose of the freight;

When the delay does not exceed 30 days, they shall then pay the outwards carriage fees in full.²⁵⁶

If the delay were to exceed 30 days, the charter fee shall only be paid in proportion to the distance travelled by the ship.

Article 689. The charter contract may be terminated at the request of the Shipper:

- 1.º If, on conclusion of the lay-days, the charterer does not deliver the cargo along side;

In that event, the charterer must pay half the carriage agreed, in addition to the lay-days and demurrage accrued.

- 2.º If the Shipper were to sell the ship before the charterer has commenced her loading and the buyer loads the cargo on his account.

In this case, the seller shall compensate the charterer for the damages caused.

If the new ship owner does not load the cargo on his account, the charter contract shall be honoured, with the seller compensating the buyer, if the former did not notify the latter about the charter pending at the time of arranging the sale.²⁵⁷

²⁵⁵ Article 687. See Articles 663 and 665 and following of this Code and 2,156 and 2,156 of the Civil Procedure Act of 1881. Also, see Articles 309 and following of the General Customs Revenue Ordinances (Official State Gazette number 350, dated 16th December 1947).

²⁵⁶ Article 688. N.1. See Article 652.1 of the Code of Commerce.

N.2. See Article 652.7 of the Code of Commerce.

N.3. See Articles 656 and 677 of this Code.

N.4. See Articles 819 and following of this Code.

N.5. See Article 683 of the Code of Commerce.

²⁵⁷ Article 689. N.1. See Articles 652.10 and 11, 656, 675 and 680 of the Code of Commerce.

Article 690. The charter contract shall be rescinded and all the actions deriving therefrom extinguished if, before the ship sets sail from the port of departure, any of the following events were to take place:

- 1.º Declaration of war or prohibition of commerce with the country to whose ports the ship must travel;
- 2.º State of blockade of the destination port or epidemic, arising after the enrolment takes place;
- 3.º Prohibition for the freight loaded on the ship to be received at that port;
- 4.º Indefinite detention of the ship due to embargo by Government order, or due to any other cause beyond the control of the shipping agent;
- 5.º The ship being disabled and unable to sail, without the Master or shipping agent being to blame.

Unloading shall be performed at the charterer's expense.²⁵⁸

Article 691. Should the ship not be able to set sail due to closure of the port of departure, or any other passing circumstance, the charter shall subsist, without either of the parties being entitled to claim damages.

The food and salaries of the crew shall be considered a common average.

During the interruption, the charterer may unload and load the freight on his account and at his own convenience, paying for the lay-days if reloading is delayed after the reason for the detention has ceased.²⁵⁹

Article 692. The charter contract shall be partially rescinded, except for a clause to the contrary, and the Master shall not be entitled to more than the outward carriage if, due to declaration of war, closure of ports or prohibition of commercial relations, the ship were to reach the port assigned in that case in the instructions by the charterer.²⁶⁰

5.º On passengers on sea voyages*²⁶¹

Article 693. Should the price of the passage not have been agreed, the Judge or Court of Law shall set it under summary terms, following statement by the appraisers.

Article 694. Should the passenger not arrive on board at the set time, or leave the ship without permission from the Master when she is about to leave port, the Master may set sail and demand the full price.²⁶²

Article 695. The right of passage, if nominative, may not be conveyed without the consent of the Master or consignee.

Article 696. If the passenger dies before starting the voyage, his heirs shall only be obliged to pay half the passage agreed.

If the price agreed includes the cost of meals, the Judge or Court of Law, hearing appraisers if deemed convenient, shall state the sum that is to be forfeited to the ship.

²⁵⁸ Article 690. *In fine*, see Articles 640 and following, 677, 755, 789.3 and 819 and following of the Code of Commerce.

²⁵⁹ Article 691. See Articles 692 and 640.4, 641 paragraph 2, 811.10 and 812 and following of this Code.

²⁶⁰ Article 692. See preceding Articles. Also Article 652.6 on the specification of the loading and unloading port in the charter contract.

^{261*} See Article 648 of this Code. In addition, Royal Decree, dated 22nd December 1989, that approves the Regulations on Mandatory Insurance for Travellers (Official State Gazette dated 28th December).

Also, see the Convention relating to the Carriage of Passengers and their Luggage by Sea, signed in Athens on 13th December 1974, of which Spain is a signatory (Official State Gazette dated 6th May 1987).

Take into consideration Act 50/1980, dated 8th October, on Insurance Contracts, if applicable by supplementary means.

Article 693. See Articles 702 and 704 of the Code of Commerce and 2,117 and 2,118 of the Civil Procedure Act of 1881.

²⁶² Article 694. See Articles 696 and following of the Code of Commerce.

Should another passenger take the place of the deceased, no sum whatsoever shall be owed by those heirs.²⁶³

Article 697. If the voyage is suspended before it begins and the Master or shipping agent are exclusively to blame, the passengers shall be entitled to be refunded their passage fees and to compensation for damages and losses; but if the suspension is due to a fortuitous event or act of God or force majeure, or any other cause that is independent of the Master or shipping agent, the passengers shall only be entitled to the refund of the passage fees.²⁶⁴

Article 698. In the event of interruption of the voyage, once it has begun, the passengers shall only be obliged to pay the passage in proportion to the distance covered and without the right to compensation for damages and losses if the interruption is due to a fortuitous event or act of God or force majeure, but with the right to compensation if the interruption were to be attributable exclusively to the Master. If the interruption is due to disablement of the ship and the passenger is willing to await the repair, he may not be required to pay any increase in the price of the passage, but must pay for his own food during the lay-days.

In the event of the ship being delayed, the passengers shall be entitled to remain aboard and be fed at the ship's expense, unless the delay is due to a fortuitous event or act of God or force majeure. If the delay exceeds 10 days, the passengers applying shall be entitled to a refund of the passage fees and, if the Master or shipping agent is exclusively to blame, may also claim compensation for losses and damages.

Ships used exclusively to transport passengers must carry them directly to their destination port or ports, regardless of the number of passengers, stopping at all the ports of call established on their route.²⁶⁵

Article 699. When the contract is cancelled before or after the voyage begins, the Master shall be entitled to claim whatever has been supplied to the passengers.²⁶⁶

Article 700. In all matters regarding keeping order and policing on board, the passengers shall be subject to the decisions by the Master, without any distinction whatsoever.²⁶⁷

Article 701. The convenience or interest of the travellers shall not bind or empower the Master to land or enter ports that take the ship off her established route, nor to stop at those where she must or is required to land, for more time than that required for the purposes of navigation.²⁶⁸

Article 702. When there is no clause to the contrary, it shall be assumed that the price of the passage includes food for the passengers during the voyage; but if this is on their account, the Master shall be obliged, when in need, to provide them the necessary food for their sustenance at a reasonable price.²⁶⁹

Article 703. The passenger shall be considered to be a consignor with regard to the belongings he brings on board, and the Master shall not be held liable for whatever he keeps under his immediate and individual custody, unless damage arises due to an act by the Master or the crew.²⁷⁰

Article 704. In order to collect the price of the passage and food costs, the Master may withhold property belonging to the passenger and, if appropriate, sell this, having preference over other creditors, proceeding to do so as if this were collection of carriage fees.²⁷¹

Article 705. In the event of death of a passenger during the voyage, the Master shall be authorised to take the relevant measures with regard to the corpse required under the circumstances, and shall carefully keep the

²⁶³ Article 696. See Articles 693, 702 and 705 of the Code of Commerce.

²⁶⁴ Article 697. See Articles 640 and 699 of the Code of Commerce.

²⁶⁵ Article 698. See Article 699 and 701 of this Code.

²⁶⁶ Article 699. See previous Articles and 702 and 704 of the Code of Commerce.

²⁶⁷ Article 700. See Article 610.3 of this Code.

²⁶⁸ Article 701. See the third paragraph of Article 698 of the Code of Commerce.

²⁶⁹ Article 702. See Article 616, 693, 696, 698, 699 and 704 of the Code of Commerce.

²⁷⁰ Article 703. See Articles 618.2 and 619 of this Code.

²⁷¹ Article 704. See Articles 665 and following and 693, 702 and 913.2 and 951 of this Code; Articles 2,161 and following of the Civil Procedure Act of 1881.

documents and property on board belonging to the passenger, observing the terms set forth in Article 612 with regard to members of the crew.²⁷²

6.º On the bill of lading

Article 706. The Master and consignor of the ship shall be obliged to issue the bill of lading, which shall state:

- 1.º The name, registration and tonnage of the ship;
- 2.º The name of the Master and his address;
- 3.º The port of loading and that of unloading;
- 4.º The name of the consignor;
- 5.º The name of the consignee, if the bill of lading is nominative;
- 6.º The quantity, quality, number of items and make of the goods;
- 7.º The contractual carriage and primage.

The bill of lading may be to the bearer, to order or with the name of a specific person, and it must be signed within twenty-four hours of the cargo being received on board, and the consignor may demand unloading at the Master's expense, if he does not sign it, and in any event, the damages and losses he is caused by this.²⁷³

Article 707. Four copies of the same nature shall be taken of the original bill of lading, and they shall all be signed by the Master and the consignor. Of these, the consignor shall keep one and send another to the consignee; the Master shall take two, one for himself and another for the shipping agent.

As many bills of lading as deemed necessary may be issued to the parties concerned; but when they are to order or to the bearer, it must be stated on all the copies, whether the first four, or subsequent ones, for whom each is intended, stating whether for the shipping agent, for the Master, for the consignor or for the consignee. If the copy assigned to the latter is duplicated, this must state that circumstance and that it is not valid other than if the first is mislaid.²⁷⁴

Article 708. Bearer bills of lading intended for the consignee shall be transferable by the material delivery of the document and; by virtue of endorsement, those issued to order.

In both cases, the party to whom the bill of lading is transferred shall acquire all the rights and actions of the assignor or endorser to the freight.²⁷⁵

Article 709. The bill of lading, formalised according to the provisions of this Title, shall constitute final evidence for all parties concerned in the cargo and between these and the insurers, except for evidence to the contrary in the case of the latter.²⁷⁶

²⁷² Article 705. See Articles 612.10 and 696 of the Code of Commerce.

²⁷³ Article 706. See the International Convention dated 25th August 1924, ratified by Instrument dated 2nd June 1930, for the unification of certain rules of law relating to bills of lading, approved by Ratification Instrument dated 2nd June 1930 (Official State Gazette number 212, dated 31st July 1930); the Act dated 22nd December 1949 (Official State Gazette number 358, dated 24th December) on carriage of goods under bill of lading regime; Royal Decree 2,714/1979, dated 2nd November, that approves the "unified coastal shipping document", and the Order dated 23rd July 1968 (Official State Gazette number 182, dated 30th July). *In fine*: See Articles 612.1, 3 and 4, 619, 652 and 653 of this Code.

²⁷⁴ Article 707. See Articles 665 and following. In addition, Royal Decree 2,714/1979 dated 2nd November and the Order dated 23rd July 1968 (Official State Gazette 182, dated 30th July) cited in previous note.

²⁷⁵ Article 708. See Articles 67.7, 706, 707, 709, 711, 713, 715, 716 and 718 of this Code, as well as Article 19 of the Act dated 22nd December 1949, cited.

²⁷⁶ Article 709. See Articles 653, 715, 754, 769.2 and 770 of this Code, and Article 21 of the Act dated 22nd December 1949.

Article 710. If the bills of lading do not match, and if no amendment or erasure is noted on any of them, the Master or the shipping agent shall be bound in favour of the consignor or consignee subject to the terms of those which the latter hold provided that they have been issued and signed by the former; and the consignor or consignee shall be bound in favour of the Master or shipping agent subject to the terms of those which they latter hold provided that they have been issued and signed by the consignor.²⁷⁷

Article 711. The legitimate bearer of a bill of lading who does not produce it to the Master of the ship before unloading, forcing the cargo to be unloaded and placed in deposit due to that omission, shall be held liable for the storage expenses and others that may arise.²⁷⁸

Article 712. The Master may not vary the destination of the freight on his own accord. If that variation is admitted at the request of the consignor, he must first collect the bills of lading that have been issued, under the penalty of being held liable for the cargo with respect to their legitimate bearer.

Article 713. If the Master is required to provide a new bill of lading before delivery of the cargo, alleging that the previous ones were not produced because they have been mislaid, or any other just cause, he shall be obliged to issue it, provided that he is guaranteed the value of the cargo to his satisfaction; but without varying the consignment, and stating on it the circumstances set forth in the last paragraph of Article 707, when these are the bills of lading to which this refers, under penalty, otherwise, of liability for that cargo if this is unduly delivered due to his omission.²⁷⁹

Article 714. If the Master dies before the ship sets sail, or ceases to act in that capacity due to any accident, the consignors shall be entitled to ask the new Master to ratify the first bills of lading, and he shall do so, provided they are submitted to him or all the copies previously issued are returned, and it turns out, on inspection of the cargo, that it matches these.

The expenses arising from the inspection of the cargo shall be borne by the shipping agent, notwithstanding his reclaiming against the first Master, if he were to blame for having ceased to hold that post. If such an inspection is not performed, it shall be understood that the new Master accepts the cargo as set forth on the bills of lading issued.²⁸⁰

Article 715. The bills of lading enable the parties to take summary or enforcement action, as the case may be, for delivery of the cargo and payment of the carriage fees and expenses arising.²⁸¹

Article 716. If several persons produce a bearer bill of lading, or one to order, endorsed in their favour, claiming the same goods, the Master shall grant preference, for their delivery, to the copy issued first, except in the event of the subsequent one being justified by the former having gone missing and when both appear in different hands.

In that case, as well as in the event of only second or subsequent copies being presented, these having been issued without that justification, the Master shall resort to the Judge or Court of Law to deposit the goods and for these to be delivered to the appropriate party through the mediation thereof.

Article 717. Delivery of the bill of lading shall give rise to cancellation of all the provisional receipts on previous dates issued by the Master or by his subordinates, in receipt of partial deliveries to them of the cargo.²⁸²

Article 718. Once the cargo is delivered, the bills of lading shall be returned to the Master who signed them, or at least the copy under which the delivery is made, with receipt of the freight consigned thereon.

Default by the consignee shall make him liable for the damages that delay may cause the Master.²⁸³

²⁷⁷ Article 710. See Articles 707, 709 and 715 of the Code of Commerce.

²⁷⁸ Article 711. See Articles 625, 668 and 678 of the Code of Commerce and 2,119 and following of the Civil Procedure Act of 1881.

²⁷⁹ Article 713. See Articles 2,159 and 2,160 of the Civil Procedure Act of 1881.

²⁸⁰ Article 714. See Articles 707 and 712 of the Code of Commerce.

²⁸¹ Article 715. See Articles 708, 709 and 710 of the Code of Commerce.

²⁸² Article 717. See Articles 653, 706 and following of the Code of Commerce.

²⁸³ Article 718. See Articles 625, 706 and following of the Code of Commerce and 1,101 of the Spanish Civil Code.

SECTION 2.^a On bottomry contracts or maritime risk loans ^{*284}

Article 719. A bottomry or maritime risk loan shall be considered that in which, under any condition, repayment of the moneys lent and the premium agreed thereon depends on successful arrival at port of the goods this arrangement concerns, or the value obtained in the event of a claim.

Article 720. Bottomry contracts may be entered into:

- 1.° By public deed;
- 2.° By means of a policy signed by the parties and the broker acting;
- 3.° By private document.

By any of these manners in which the contract is entered into, it shall be annotated on the ship's registration certificate and this shall be recorded at the Business Registry, without which requisites such loans shall not have preference with regard to others that, according to their nature, they would be entitled to, although the obligation shall be effective between the parties to the contract.

Contracts entered into during the voyage shall be governed by the terms set forth in Articles 583 and 611, and shall take effect with regard to third parties from the moment they are signed, if they are registered at the Business Registry at the port of registration of the ship before eight days elapse from her arrival. If eight days elapse without the entry being performed at the Business Registry, the contracts entered into during the ship's voyage shall not take effect with regard to third parties, except from the day and date of registration.

In order for the policies of the contracts entered into pursuant to paragraph number 2 to have executive force, they must comply with the records kept by the broker who intervened in these. In those entered into pursuant to number 3, recognition of the signature shall precede these.

Contracts not recorded in writing shall not be actionable in court.²⁸⁵

Article 721. The bottomry contract must state:

- 1.° The class, name and registration of the ship;
- 2.° The name, surname and address of the Master;
- 3.° The names, surnames and addresses of the parties lending and borrowing;
- 4.° The capital of the loan and the premium agreed;
- 5.° The term for repayment;
- 6.° The objects pledged to guarantee repayment;
- 7.° The voyage for which the risk is run.²⁸⁶

^{284*} On the prescription of actions arising from bottomry loans, see Article 954 of the Code of Commerce.

²⁸⁵ Article 720. See Articles 721 and following of the Code of Commerce.

N.2. See Articles 113.1 of Code of Commerce, 6.1 of the Organic Royal Decree on the Corps of Maritime Interpreter Brokers, dated 8th July 1930 (Gazette number 195, dated 14th July 1930), 31 and 34.3 of the Regulations on Maritime Interpreter Brokers dated 30th November 1933 (Gazette number 340, dated 6th December), amended by Order dated 5th May 1934 (Gazette number 126, dated 6th May).

In paragraph two, see Articles 580.9, 612.9 and 730 of this Code. Likewise, Articles 32, 33 of the Naval Mortgage Act dated 21st August 1893 and Article 159 of the Business Registry Regulations.

See Articles 583, 611.4 and 612.12 of this Code, as well as Article 159 of the Business Registry Regulations, with regard to paragraph three.

See Articles 51, 52 and 731 of this Code, in relation to the penultimate and last paragraph of this Article.

²⁸⁶ Article 721. See Article 722 of this Code.

N.4. See Articles 723, 726 and 727 of this Code.

N.5. See Article 733 of this Code.

Article 722. The contracts may be issued to order, in which case they shall be transferable by endorsement and the assignee shall acquire all the rights and run all the risks that would have been borne by the endorser.²⁸⁷

Article 723. Loans may be granted on goods and freight, setting their value to determine the capital of the loan.²⁸⁸

Article 724. Loans may be constituted jointly or separately:

- 1.º On the hull of the ship;
- 2.º On the rigging;
- 3.º On the equipment, stock and fuel;
- 4.º On the engine, in the case of a steamer;
5. On the freight loaded.

If constituted on the hull of the ship, the liability of the loan shall also be understood to affect the rigging, equipment and other goods, food, fuel, steam engines and charter fees accrued on the loan voyage.

If on the cargo, everything forming it shall be encumbered for repayment; and if on a specific object on the ship or the cargo, it shall only affect the liability specified and as specifically named.²⁸⁹

Article 725. Bottomry loans may not be taken on the salaries of the crew or on the expected profits.²⁹⁰

Article 726. If the lender were to ascertain that he has lent a greater sum than the value of the object encumbered with the bottomry loan, due to the borrower having used fraudulent means, the loan shall be valid only for the moneys obtained according to the appraisal value of that object.

The surplus capital shall be returned with the legal interest for the whole time the disbursement has lasted.²⁹¹

Article 727. If the total sum of the loan to load the ship is not used on cargo, the surplus shall be returned before the expedition.

The same shall be done in respect of goods taken on loan, if they could not have been loaded.

Article 728. The loan that the Master takes at the point of residence of the owners of the ship shall only affect the part of her that belongs to the Master, if the rest of the owners or their proxies have not given their specific authorisation or intervened in the operation.

If anyone or a number of the owners are required to deliver the necessary moneys for repairs or stocking the ship, and they do not do so within twenty-four hours, the share the negligent parties have in the ownership shall be encumbered, in the due proportion, to the liability of the loan.

N.6. See Articles 724, 725 and 731 of this Code.

N.7. See Articles 731 and 733 of the Code of Commerce.

²⁸⁷ Article 722. See preceding Articles. Also Articles 731 and 461 and following of the Code of Commerce.

²⁸⁸ Article 723. See Articles 719, 721.4, 726 and following of the Code of Commerce.

²⁸⁹ Article 724. See Articles 583, 611.4, 612.9 and 12, 721.6 and 7 and 725 of this Code.

N.1. See Articles 580.9, 617 and 621 of this Code.

N.2. and 3. See Articles 580.9 and 621 of this Code.

N.4. See Article 621 of this Code.

N.5. See Articles 617 and 621 of the Code of Commerce.

²⁹⁰ Article 725. See previous Article.

²⁹¹ Article 726 See Articles 721.4 and 6 and 723 of this Code, pursuant to the provisions of Article 1 of Act 24/1984 dated 29th June, the legal of interest on money is established, up to 31st December 1999, at 4.25 per cent (5th Additional Provision of Act 49/1998, dated 30th December, on General State Budgets for 1999) (Official State Gazette number 313, dated 31st December).

Outside the residence of the owners, the Master may take loans according to the terms of Articles 583 and 611.²⁹²

Article 729. If the property on which money is borrowed is not put at risk, the contract shall be reduced to a simple loan, with the obligation for the borrower to return capital and interest at the legal rate, if the interest agreed is not less.²⁹³

Article 730. Loans made during the voyage shall have preference over those made before the ship was dispatched and they shall be classified in reverse order to that of their dates.

Loans for the last voyage shall have preference over previous loans.

On the concurrence of several loans made at the same port of forcible arrival and for the same reason, all shall be paid in proportion.²⁹⁴

Article 731. The relevant actions of the lender shall expire with the complete write-off of the property upon which the loan was granted, if due to an accident at sea within the time and during the voyage specified in the contract, and if the existence of the cargo on board can be proved; but this shall not be the case if the loss is due to a flaw inherent to the item concerned, or if arising due to fault or malice by the borrower, or barratry by the Master, or if caused by damage suffered by the ship due to her being used in smuggling, or if due to loading freight on a different ship to that specified in the contract, except if that change had to be carried out due to act of God or force majeure.

The evidence of the loss befalls upon the borrower, as well as that of the existence on board ship of the goods declared to the lender as the object of the loan.²⁹⁵

Article 732. Bottomry lenders shall bear the common damage to the items upon which the loan is granted according to their respective stake therein.

In simple claims, if the parties to the contract do not reach a specific agreement, the bottomry lender shall also contribute for his respective stake, if such claims are not included in the types of risks excepted in the preceding Article.²⁹⁶

Article 733. Should the contract not have set the period of time during which the taker shall be subject to the risk, it shall last, with regard to the ship, engine, rigging and equipment, from the moment she sets sail, until she anchors at the port of destination, and with regard to the goods, from when they are loaded on the shore or dock at the port of dispatch, until they are unloaded at that of consignment.²⁹⁷

Article 734. In the event of shipwreck, the moneys assigned to repayment of the loan shall be reduced to the product obtained from the salvaged goods, after deduction of the salvage expenses.²⁹⁸

If the loan is on the ship or any of her parts, the carriage during the voyage for which it was granted shall also be held in lien for its payment to the possible extent thereof.

Article 735. If there is a bottomry loan and maritime insurance on the same ship or cargo, the value of what is saved shall be divided up, in the event of shipwreck, between the taker and the insurer, in proportion to the legitimate interest of each one, for which purpose only the capital shall be taken into account with regard to the loan, and notwithstanding the preferential rights of other creditors, pursuant to Article 580.²⁹⁹

Article 736. If repayment of the capital and interest of the loan are delayed, only the former shall accrue legal interest.³⁰⁰

²⁹² Article 728. See Articles 583 and 611 of this Code, as well as 2,161.9 of the Civil Procedures Act of 1881.

²⁹³ Article 729. See Articles 719 of the Code of Commerce and Articles 311 and following. Take into consideration Article 1 of Act 24/1984, cited in the note to Article 726.

²⁹⁴ Article 730. See Articles 580.9, 583, 584, 720 and 732 of the Code of Commerce.

²⁹⁵ Article 731. See Articles 719, 720, 721.6 and 7 and 799 of this Code.

²⁹⁶ Article 732. See Articles 730 and 806 and following of this Code.

²⁹⁷ Article 733. See Articles 719, 721.5 and 7, 724 and 781 of the Code of Commerce.

²⁹⁸ Article 734. See Articles 724, 840 and following of this Code.

²⁹⁹ Article 735. See Articles 580, 737 and following, 781.1, 840 and following of this Code.

³⁰⁰ Article 736. See Articles 317 of this Code and 1,109 of the Spanish Civil Code. Pursuant to the provisions of Article 1 of Act 24/1984 dated 29th June, the legal of interest on money is established, up to 31st December 1999, at 4.25 per cent (5th Additional Provision of Act

SECTION 3.^a On maritime insurance^{*301}

1.º *On the format of this contract*

Article 737. In order for a maritime insurance contract to be valid, it must be recorded in writing on a policy signed by the parties to the contract.

Such a policy shall be laid out and signed in duplicate, one copy being kept by each one of the parties to the contract.³⁰²

Article 738. The insurance contract policy shall contain, in addition to the conditions that are freely established by the parties concerned, the following requisites:

- 1.º Date of the contract, stating the time when it is entered into;
- 2.º Names, surnames and addresses of the insurer and insured;
- 3.º Capacity in which the insured is entering into the contract, stating whether he is acting on his own behalf or that of another.

In the former case, the name, surname and address of the person on whose behalf he is taking out the insurance.

- 4.º Name, port, flag and registration of the ship insured or that is to carry the insured goods;
- 5.º Name, surname and address of the Master;
- 6.º Port or roadsteads at which the freight insured is to be loaded;
- 7.º Port from which the ship has departed, or must depart;
- 8.º Ports or roadsteads at which the ship must load, unload or stop over for any reason;
- 9.º Nature and quality of the objects insured;
10. Number of bales or packages of any kind, and their brands, if they have any;
11. Date in which the risk covered is to commence and end;
12. Sum insured;
13. Price agreed for the insurance, the place, time and terms of payment;
14. Part of the relevant premium for the outward voyage and the homeward one, if the insurance is round trip;
15. Obligation of the insurer to pay the damage arising to the goods insured;
16. The place, date and manner in which the payment is to be made.³⁰³

Article 739. Insurance contracts and policies authorised by consular officers abroad, when the parties to the contract or any of them are Spanish, shall have the same legal value as if performed with intervention by a broker.³⁰⁴

49/1998, dated 30th December, on General State Budgets for 1999) (Official State Gazette number 313, dated 31st December).

^{301*} On the prescription of actions arising from maritime insurance, see Article 954 of this Code. Take also into consideration Act 50/1980, dated 8th October, on Insurance Contracts (Official State Gazette number 250, dated 17th October 1980).

³⁰² Article 737. See Articles 317 and following. Also Articles 51, 52, 381, 382, 384, 385, 781 and following of this Code, as well as Article 1,793 of the Spanish Civil Code.

³⁰³ Article 738. See Articles 383, 384, 385, 740 and following of this Code; Article 1,794 of the Spanish Civil Code.

³⁰⁴ Article 739. See Articles 55, 58, 89, 93 and 133.1 of this Code. Also, see Article 6 of the Royal Decree dated 8th July 1930, on intervention by Maritime Interpreter Brokers in insurance contracts, and Articles 34 and 35 of the Regulations on Maritime

Article 740. A same contract and a same policy may include the ship's insurance and that of the cargo, stating the value of each, and distinguishing the moneys insured on each one of the objects, without statement of which the insurance shall be void.

The policy may also set different premiums for each object insured.

Several insurers may sign a same policy.³⁰⁵

Article 741. The insurance of freight may omit the specific designation of this and of the ship that is to carry them, when these particulars are not available to the insured.

If the ship under these circumstances were to suffer an accident at sea, the insured shall be obliged to prove, in addition to the loss of the ship, that she left her port of loading and the loading on his account of the goods lost, and their value, to claim the compensation.³⁰⁶

Article 742. Insurance policies may be issued to order of the insured, in which case they shall be endorsable.

2.º On items that may be insured and their valuation

Article 743.

The following may be subject to maritime insurance:

- 1.º The hull of the ship, bare or loaded, in port, or at sea;
- 2.º The rigging;
- 3.º The engines, if a steamer;
- 4.º All of the equipment and objects that make up her fittings;
- 5.º Stores and bunker fuels;
- 6.º The moneys granted on bottomry;
- 7.º The sum of the charter fees and probable profits;
- 8.º All the commercial objects subject to navigational risks whose value may be set at a specific sum.³⁰⁷

Article 744. All or part of the objects stated in the preceding Article may be insured, jointly or separately, in times of peace or war, by voyage or on conclusion, by one way trip or by return voyage, on good or bad news.³⁰⁸

Article 745. If it were to generically stated in the insurance policy that the insurance is on the ship, it shall be understood to include the engines, rigging, equipment and everything assigned to the ship; but not her cargo, although it may belong to the same shipping agent.

Generic insurance of freight shall not be considered to include metal in coin or ingot, precious stones or war munitions.³⁰⁹

Interpreter Brokers, dated 30th November 1933, cited in the note to Article 730.

³⁰⁵ Article 740. See Articles 738.2, 9, 12 and 14, 743, 744, 745, 751 and 758 of the Code of Commerce.

³⁰⁶ Article 741. See Articles 738.9, and 10, 743, 745.2, 754, 758 and 759 of the Code of Commerce.

³⁰⁷ Article 743. See Articles 724, 738.9, 744 and 781 of this Code.

N.1. See Articles 745, paragraph 1 and 751 of this Code.

N.7. See Articles 725, 746, 747 and 748 of this Code.

N.8. See Article 745.2 of the Code of Commerce.

³⁰⁸ Article 744. See Articles 724, 743, 745, 746, 747, 748, 751, 757, 761, 762 and 785 of this Code.

³⁰⁹ Article 745. See Articles 387, 576 and 724 of the Code of Commerce.

Article 746. Charter insurance may be taken by the consignor, by the Shipper or the Master; but these may not insure the advance they may have received to account of their carriage fees, except if specifically agreed that, should this not accrue due to shipwreck, or loss of the cargo, they shall return the moneys received.³¹⁰

Article 747. The charter insurance must state the sum to which it amounts, which may not exceed that recorded in the charter contract.

Article 748. Insurance of profit shall be governed by the acts agreed by the parties to the contract, but the policy must state the following:

- 1.º The specific sum of profit estimated by the insured, once the cargo has successfully arrived at the port of destination and is sold;
- 2.º The obligation to reduce the insurance if, once compared with the figure obtained from the sale, after subtracting expenses and charter fees, with the purchase value, it is less than valued in the insurance.³¹¹

Article 749. The insurer may have others reinsure the goods he has insured, fully or partially, with the same or a different premium, and the insured may also insure the cost of the insurance and the risk that he may run collecting from the first insurer.³¹²

Article 750. If the Master were to take out the insurance, or the owner of the items insured were to travel on the same ship as carrying them, 10 per cent shall always be left to his own risk, should no specific clause have been established to the contrary.³¹³

Article 751. The ship's insurance shall be understood to cover only the insurance of four fifths of her amount or value, and that the insured bears the risk of the remaining fifth, unless a clause to the contrary is specifically provided in the policy.

In this case, and in the preceding Article, the sum of bottomry loans taken from the insurance must be discounted.³¹⁴

Article 752. Signing the policy shall create a legal presumption that the insurers admitted the valuation made on it of the items insured as exact, except in cases of fraud or malice.

If the valuation were to be considered exaggerated, according to the circumstances of the case, the following shall be applicable:

If the exaggeration arises from error and not from malice due to the insured, the insurance shall be reduced to its true value, either set by the parties by common agreement, or by an appraiser. The insurer shall return the surplus premium received, although he shall withhold half a percent of that surplus.

If the exaggeration were to be due to fraud by the insured, and the insurer proves this, the insurance shall be void for the insured and the insurer shall make his the premium, notwithstanding any criminal action to which he may be entitled.³¹⁵

Article 753. Conversion to the value in the national currency, when the sum has been set in a foreign currency, shall be performed at the current exchange rate in the place and on the date when the policy was signed.³¹⁶

³¹⁰ Article 746. See Articles 652.8, 658 to 664, 743.7 and 747 of the Code of Commerce.

³¹¹ Article 748. See Article 743.7 of the Code of Commerce.

³¹² Article 749. See Article 400 of the Code of Commerce as well as Article 77 of the Insurance Contracts Act.

³¹³ Article 750. See Article 751.2. The percentage stated shall be applied, as an excess, to the sum insured that is recorded in the policy, pursuant to the provisions of Article 738.12.

³¹⁴ Article 751. See Article 408 of the Code of Commerce.
See Articles 719 and following and 781.1 of this Code.

³¹⁵ Article 752. See Articles 1,249 and following of the Spanish Civil Code, on assumptions.
See Articles 381, 781.8 and 788 of this Code, as well as Article 1,795.1 of the Spanish Civil Code.

³¹⁶ Article 753. See Article 738.12 of the Code of Commerce.

Article 754.

If, at the time of entering into the contract, it does not include a specification of the value of the items insured, this shall be determined:

- 1.º By the consignment invoices;
- 2.º By a statement by brokers or appraisers, who shall proceed to issue their findings based on the prices of the goods at the port of departure, plus the expenses of loading, carriage and customs.

If the insurance were to concern freight returning to a country in which trade is performed by barter alone, the value shall be set by that of the goods bartered at the port of departure, with all the expenses.³¹⁷

3.º *Obligations between the insurer and insured*

Article 755. The insurers shall compensate the damages and losses that the objects insured undergo due to any of the following causes:

- 1.º Should the ship run aground or onto rocks, with or without breakage;
- 2.º Storm;
- 3.º Shipwreck;
- 4.º Fortuitous collision;
- 5.º Change in route or ship during the voyage;
- 6.º Jettison;
- 7.º Fire or explosion, if caused to the freight, both on board as well as that deposited on land, provided it has been stocked there under order by the competent authority, to repair the ship or for the benefit of the cargo; or fire by spontaneous combustion of the coal bunkers on steam ships;
- 8.º Seizure;
- 9.º Sacking;
10. Declaration of war;
11. Embargo by Government order;
12. Detention by order of a foreign country;
13. Retaliation;
14. Any other accidents or risks at sea.

The parties to the contract may stipulate the exceptions they may see fit, mentioning them in the policy, without which requisite these shall not take effect.³¹⁸

³¹⁷ Article 754. See Articles 709, 738, 741, 757 and 769 of this Code, as well as Articles 1,214 and following of the Spanish Civil Code.

³¹⁸ Article 755. N.1. See Articles 789.2, 790, 811.6, 840 and following of the Code of Commerce.

N.2. See Articles 624, 811, 817 and 832 of the Code of Commerce.

N.3. See Articles 624, 789.1, 790, 791, 840 and following of the Code of Commerce.

N.4. See Articles 809.8, 826 and following of the Code of Commerce.

N.5. See Articles 622, 630, 738.8, 756.1, 2 and 3, 760 and 764 of the Code of Commerce.

N.6. See Articles 811.2, 815 and 816 of the Code of Commerce

Article 756. The insurers shall not be held liable for the damages and losses arising to items insured due to any of the following causes, although they may not have been excluded from the policy:

- 1.º Voluntary change of the route of the voyage or ship, without specific consent by the insurers;
- 2.º Spontaneous separation from a convoy, when it is stipulated that the ship is to sail under escort within it;
- 3.º Extension of the voyage to a more remote port than that assigned in the insurance;
- 4.º Arbitrary provisions that are contrary to the charter policy or the bill of lading, taken by order by the Shipper, consignors and owners;
- 5.º Barratry by the skipper, unless this is insured;
- 6.º Shrinkages, spillages and wastage arising from the nature of the items insured;
- 7.º Lack of the documents specified in this Code, in the Ordinances and Regulations of the Merchant Navy or navigation or omissions of another kind by the Master, against the administrative provisions, unless coverage for barratry by the Master is taken against the insurer.

In any of these cases, the insurers shall take make theirs the premium, provided they have begun to cover the risk.³¹⁹

Article 757. In cargo insurance taken for round trips, if the insured does find cargo for the return, or only finds less than two thirds, the return premium shall be reduced in proportion to the cargo carried, and the insurer shall also be paid half percent of the part not carried.

However, no reduction whatsoever shall be appropriate in the event of the cargo having been lost on the outward leg, except for a special clause to amend this provision of this Article.³²⁰

Article 758. If the cargo is insured by several insurers in different capacities, but without specifically stating the objects insured, the compensation shall be paid, in the event of loss or claim, by all the insurers, in proportion to the sum insured by each one.³²¹

Article 759. If different ships are appointed to load the items insured, but without stating the quantity that is to be loaded on each ship, the insured may distribute the cargo as he best sees fit, or take it on board a single one, without the liability of the insurer being made void by this. However, if specific mention is made of the quantity insured on each ship and the cargo is placed on board in different quantities to those that have been stated for each one, the insurer shall have no more liability than that taken for each ship. However, he shall charge the half percent of the surplus loaded on them over and above the contractual quantity.

If any ship were to be left without cargo, the insurance shall be understood to be annulled with regard to it, by the payment aforesaid of half a percent on the surplus loaded on the others.³²²

Article 760. If, due to the disablement of the ship before she leaves port, the cargo were to be transferred to another, the insurers shall have the option of whether or not to continue with the contract, paying for the claims that

N.7. See Articles 386 and following, 792, 811.4 and 817 of the Code of Commerce.

N.8 See Articles 623, 768, 789.3, 790, 791, 801, 802, 811.1 and 9 of the Code of Commerce.

N.9. See the previous note.

N.10. See Articles 690.1 and 767 of the Code of Commerce.

N.11. See Articles 690.4, 789.3, 795, 809.4 and 811.10 of this Code.

N.13. See the note on numbers 8 and following of this Article.

N.14. See Articles 771, 774, 776, 809.1 and 2, 811, 819 and following of the Code of Commerce.

See Article 738. Also Articles 756, 806 and following of this Code, in relation to the last paragraph.

³¹⁹ Article 756. See Articles 612, 618, 670, 671, 731, 738, 755 of the Code of Commerce.

³²⁰ Article 757. See Articles 744 and 754 of the Code of Commerce.

³²¹ Article 758. See Articles 740, 741, 745.2, 782 and 783 of this Code.

³²² Article 759. See Articles 740 and 741 of this Code.

have arisen; but if the disablement arises after the voyage has begun, the insurers shall bear the risk, even when the ship is of a different tonnage and flag to that specified in the policy.³²³

Article 761. If the policy has not set the time for which the risks are to be borne by the insurer, the terms specified in Article 733 on bottomry loans shall apply.³²⁴

Article 762. In fixed term insurance, the liability of the insurer shall cease at the time when the stipulated term has elapsed.

Article 763. If, due to the convenience of the insured, the freight is unloaded at a nearer port to that assigned to complete the voyage, the insurer shall make the contractual premium his without any reduction whatsoever.³²⁵

Article 764. The insurance shall be understood to include, if specifically not excluded from the policy, the necessary stops at ports of call made to conserve the ship or her cargo.³²⁶

Article 765. The insured shall notify the insurer by the first mail following that of receipt, and by telegraph, if available, of the news on the progress of the navigation by the ship insured, and of the damages or losses suffered by the items insured, and shall respond for the damages and losses caused due to his omission.³²⁷

Article 766. If freight insured on account of the Master commanding the ship on which it is boarded is lost, he must justify their purchase to the insurers, by means of the invoices from the sellers; and that it was loaded on and carried by the ship, by a certification extended by the Spanish Consul or the competent authority where there is none of the port where it was loaded, and by any other customs authorisation and dispatch documents.

The same obligation shall apply to all parties insured sailing with their own freight, except as otherwise agreed.³²⁸

Article 767. If the policy stipulates an increased premium in the event of war breaking out and the sum of that increase has not been set, it shall be established, failing agreement between the parties concerned themselves, by appraisers appointed in the manner established in the Civil Procedure Act, taking into account the circumstances of the insurance and the risks run.

Article 768. Free return of the ship or her cargo to the Master by parties that have seized her shall inure to the benefit of the respective owners, without obligation, by the insurers to pay the moneys insured.³²⁹

Article 769. All claims arising from the insurance contract must be accompanied by the documents that justify:

- 1.º The voyage by the ship, with the protest by the Master or certified copy of the ship logbook;
- 2.º Loading of the objects insured, with the bill of lading and customs dispatch documents;
- 3.º The insurance contract, with the policy;
- 4.º The loss of the items insured with the same documents as number 1, and a statement by the crew, if necessary.

The discount for the objects insured shall also be set, following inspection by appraisers.

The insurers may contradict the claim and they shall be allowed to produce evidence in trial in that regard.³³⁰

³²³ Article 760. See Articles 738.4, 755 and 756 of this Code.

³²⁴ Article 761. See Articles 733, 738.11, 744, 761 and 799 and 738.11, 744 and 799 of the Code of Commerce.

³²⁵ Article 763. See Articles 684, 738.8, 13 and 14 of the Code of Commerce.

³²⁶ Article 764. See Articles 738.8 and 756 of the Code of Commerce.

³²⁷ Article 765. See Article 795 of this Code.

³²⁸ Article 766. See Articles 649 and following, 741, 754 and 769 of the Code of Commerce. On intervention by Consuls, see the note to Article 578.

³²⁹ Article 768. See Articles 623, 755.8, 789.3, 791, 801, 802 and 811.1 of this Code.

³³⁰ Article 769. See Articles 612.3, 8 and 15, 624, 653, 709, 710, 737 and following, 754 and 770 of this Code, in relation to the last paragraph.

Article 770. Once the justifying documents are presented, the insurer must pay the compensation, if he finds them to be consistent and the loss justified, within the period of time stated in the policy and, failing that, within 10 days of the claim.

However, if the insurer rejects it and contradicts it judicially, he may deposit the sum recorded in the receipts, or deliver it to the insured under sufficient guarantee, one or the other to be decided by the Judge or Court of Law, as appropriate.³³¹

Article 771. If the ship insured suffers damage due to an accident at sea, the insurer shall only pay two thirds of the repair expenses, whether or not the repairs are carried out. In the first case, the sum of the expenses shall be justified by the legally recognised means; in the second, it shall be assessed by appraisers.

Only the shipping agent, or the Master authorised to that end, may opt not to repair the ship.³³²

Article 772. If, due to the repair, the value of the ship were to increase by more than one third of the sum in which she had been insured, the insurer shall pay two thirds of the amount of the repair, subtracting the greater value that the ship might have gained.

However, if the insured were to prove that the greater value of the ship was not due to the repair, but rather that the ship was new and the breakage occurred on the first voyage, or that it was the engines, rigging or equipment destroyed that were new, no subtraction for the increase in value shall be made, and the insurer shall pay the two thirds of the repair, according to rule 6 of Article 854.³³³

Article 773. If the repairs exceed three quarters of the value of the ship, it shall be understood to be disabled to sail, proceeding to abandon it; and if that declaration is not made, the insurers shall then pay the sum of the insurance, deducting the value of the damaged ship or her remains.³³⁴

Article 774. In the case of compensations from general average, once the settlement, liquidation and payment operations thereof have concluded, the insured shall deliver the insurer all the accounts and documents to justify the claim for compensation of the moneys to which he would have been entitled. The insurer shall proceed to study the assessment and, if it complies with the terms of the policy, shall be obliged to pay the insured the relevant sum, within the agreed period, or failing that, within a period of eight days.

From that date, the moneys owed shall begin to accrue interest.

If the insurer finds that the assessment does not comply with the terms agreed in the policy, he may make a claim before the competent Judge or Court of Law within the same period of eight days, posting the sum claimed as a deposit.³³⁵

Article 775. Under no circumstances may the insurer be required to provide a higher sum than the total sum of the insurance; if the ship salvaged, after a forcible putting in to repair damage, is then lost; or if the part that is to be paid for general average amounts to more than the insurance, or if the cost of the different breakages and repairs on a same voyage or within the term of insurance exceeds the sum insured.³³⁶

Article 776. In cases of simple claims with regard to the freight insured, the following rules shall be observed:

- 1.^a Everything that has disappeared due to theft, loss, sale on the voyage, due to deterioration, or any maritime accident covered by the insurance contract, shall be justified according to the invoice value or, failing that, by the agreed insurance value, and the insurer shall pay the relevant amount;

³³¹ Article 770. See Article 769.

³³² Article 771. See Article 751 of this Code.

³³³ Article 772. See Article 774.

³³⁴ Article 773. See Article 789.4 of the Code of Commerce.

³³⁵ Article 774. See Article 738, 811 and following, 846 and following, 851 and following of the Code of Commerce.

³³⁶ Article 775. See Articles 738.12, 750 to 754 and 771 to 774 of the Code of Commerce.

- 2.^a If all or part of the goods are found to be damaged when the ship has duly reached port, the appraisers shall record the value they would have had if they had arrived in proper condition and that they have in their deteriorated state.

The difference between both liquid values, also subtracting the customs duties, carriage and any other similar amounts, shall constitute the value or amount of the claim, to which the expenses of appraisers and others, if any, shall be added.

If the claim concerns the whole cargo insured, the insurer shall pay the whole amount of the loss arising; but if it only amounts to a part, the insured shall have the relevant proportion reimbursed.

If insurance has been taken on the probable profit of the consignor, this shall be settled separately.³³⁷

Article 777. Once the appraisers have established the simple claim on the ship, the insured may justify his right according to the terms provided at the end of number 9 of Article 580, and the insurer shall pay pursuant to the terms of Articles 856 and 859.

Article 778. The insurer may not bind the insured to sell the object of the insurance to establish its value.³³⁸

Article 779. If the valuation of the items insured were to be performed in a foreign country, the laws, practices and customs of the place where this is to be carried out shall apply, notwithstanding submission to the provisions of this Code to ascertain the facts.³³⁹

Article 780. Once the insurer has paid the sum insured, he shall be subrogated in the place of the insured for all the relevant rights and actions against those who, through malice or negligence, have caused the loss of the goods insured.³⁴⁰

4.º On cases in which the contract is annulled, rescinded or amended

Article 781. Insurance contracts shall be considered null and void when they affect:

- 1.º Ships or freight previously encumbered in favour of a bottomry loan for their full value;

If the bottomry loan is not for the entire value of the ship or freight, the insurance may subsist in the part exceeding the amount of the loan.

- 2.º On the life of the crew and passengers;

- 3.º On the wages of the crew;

- 4.º On goods that it is illicit to trade in the flag country of the ship;

- 5.º On ships normally used for smuggling, when the damage or loss arises due to having done so, in which case the insurer shall be paid half percent of the sum assured;

- 6.º On a ship that does not put out to sea within a period of six months following the date of the policy, without there being an act of God or force majeure impeding it; in which case, in addition to annulment, half per cent of the sum insured must be paid to the insurer,

- 7.º On ships that cease to undertake the contractual voyage, or head for a different location to that stipulated; in which case the insurer shall also be paid half per cent of the sum insured;

- 8.º On matters in the assessment of which fraud has been knowledgably committed.³⁴¹

³³⁷ Article 776. See Articles 809, 810 to 850 and 869 of the Code of Commerce, in relation with the last paragraph.

³³⁸ Article 778. See preceding Articles.

³³⁹ Article 779. See Articles 769 and following.

³⁴⁰ Article 780. See Articles 413, 437 and 770 of this Code.

³⁴¹ Article 781. See Articles 381, 743 and following and 784 of the Code of Commerce
N.1. See Articles 719, 724, 735 and 751, second paragraph of the Code of Commerce

Article 782. If different insurance contracts are applied on a same object, without fraud, only the first one shall subsist, provided this covers its entire value.

Insurers on a subsequent date shall be free of liability and shall receive a half per cent of the sum insured.

Should the first contract not cover the full value of the object insured, the excess liability shall befall the subsequent insurers following the order of dates.³⁴²

Article 783. The insured shall not be waived payment of the full premiums of the different insurers, if he does not notify the subsequent ones of termination of their contracts before the object insured has reached its port of destination.

Article 784. Insurance taken after the loss, damage or safe arrival of the object insured at the port of destination shall be null and void provided it may rationally be assumed that the news of one or the other had come to the knowledge of one of the parties to the contract.

That presumption shall exist when the notice has been published in a town, there being the necessary time to notify it by mail or telegraph to the place where the insurance was taken, notwithstanding the other evidence that may be obtained by the parties.³⁴³

Article 785. Insurance contracts on good or bad news shall not be annulled if the bill of lading does not prove the event expected or feared by any of the parties to the contract at the moment that the contract is formalised.

If this is proven, the fraudster shall pay the party jointly bound one fifth of the sum insured, notwithstanding any criminal liability that may arise.³⁴⁴

Article 786. If the party taking the insurance, aware of the total or partial loss of the objects insured, were to act on behalf of others, he shall be personally liable for that fact as if he had acted on his own account and if, on the contrary, the proxy was innocent of the fraud committed by the owner insured, all the liabilities shall befall the latter, always being charged with paying the insurers the premium agreed.

The same provision shall apply with regard to the insurer when the insurance is taken by means of a proxy whilst being aware of the salvage of the items insured.³⁴⁵

Article 787. If, pending the risk of the items insured, the insurer or insured are declared bankrupt, they shall both be entitled to demand a guarantee, the former to cover the liability of the risk, and the latter to obtain payment of the premium; and if the bankruptcy representatives refuse to provide it within the three days following demand, the contract shall be cancelled.³⁴⁶

In the event of a claim arising during those three days without the guarantee having been presented, there shall be no right to compensation or to the insurance premium.

Article 788. If insurance is fraudulently taken by several insurers and one or some of them have proceeded in good faith, these shall be entitled to obtain the full premium for their insurance from those who have proceeded with malice, the insured remaining free of all liability.

N.3. See Article 725 of the Code of Commerce.

N.4. See Articles 618.3 and 682 of the Code of Commerce.

N.6. See Article 673 of the Code of Commerce.

N.7. See Article 738.8 of the Code of Commerce

³⁴² Article 782. See Articles 381, 383.8, 749 and 783 of this Code and Article 1,795 of the Spanish Civil Code.

³⁴³ Article 784. See Articles 381, 785, 786 and 788 of this Code, as well as Article 1,797 of the Spanish Civil Code. On assumptions, see Articles 1,249 and following of the Spanish Civil Code.

³⁴⁴ Article 785. See Articles 744 and 784 of the Code of Commerce.

³⁴⁵ Article 786. See Articles 247, 381, 738.3, 784 and 785 of the Code of Commerce.

³⁴⁶ Article 787. See Articles 874 and following of the Code of Commerce.

The same principle shall be applied in relation to the insured with regard to the insurers when one or more of the former have entered into fraudulent insurance.³⁴⁷

5.º On the abandonment of the items insured

Article 789. The insured may abandon the items insured on the account of the insurer, demanding that the insurer pay the sum stipulated in the policy:

- 1.º In the event of shipwreck;
- 2.º If the ship becomes unseaworthy due to grounding, breakage or any other accident at sea;
- 3.º If seized, embargoed or detained by order of the Spanish Government or a foreign one;
- 4.º In the event of total loss of the items insured, this being understood to mean a three quarter decrease in their insured value.

Any other damage shall be considered claims and borne by the relevant party, according to the conditions of the insurance and provisions of this Code.

Abandonment shall not be possible in either of the first two cases if the ship that has been wrecked, grounded or disabled might be towed off, refloated or repaired to continue the voyage to her destination port, unless the cost of the repair were to exceed three quarters of the value for which the ship is insured.³⁴⁸

Article 790. When repair to the ship is performed, the insurers shall only be held liable for the expenses caused by the running aground or other damage the ship may have received.³⁴⁹

Article 791. In cases of shipwreck and seizure, the insured shall be obliged to carry out the appropriate actions in view of the circumstances; to save or recover the goods lost, notwithstanding any abandonment that may be performed at a latter time, and the insurer must reimburse the insured all legitimate expenses disbursed on the salvage, up to the value of the property salvaged, which shall be used for payment if this is not forthcoming.³⁵⁰

Article 792. If the ship becomes absolutely unseaworthy, the insured shall be obliged to notify the insurer of this, by telegraph, when possible, and if not, by the first mail following receipt of the news. The parties interested in the cargo who are present, or in their absence, the Master, shall perform all the possible actions to carry the cargo to the port of destination, according to the terms set forth in this Code; in which case the insurer shall bear the risks and expenses of unloading, storage, reloading or trans-shipping, surplus carriage fees, and all others, until the goods insured are put into storage at the point stated in the policy.³⁵¹

Article 793. Without prejudice to the provisions set out in the preceding Article, the insurer shall be granted a period of time of six months to transport the freight to its destination, if the disablement has taken place in the seas surrounding Europe, from the Strait of Sund to the Bosphorus, and one year if this takes place at a more distant place; this period shall begin to count as from the day on which the insured has notified the claim.³⁵²

³⁴⁷ Article 788. See Articles 381, 740, paragraph 3, 782 and following of the Code of Commerce.

³⁴⁸ Article 789. See Articles 796, 798, 800, 803, 804 and 805 of the Code of Commerce.

N.1. See Articles 755.3 and 791 of the Code of Commerce.

N.2. See Articles 755.1, 2, 4 and 14, 760, 792, 793 and 794 of the Code of Commerce.

N.3. See Articles 755.8, 10, 11 and 12, 768, 791, 795, 801 and 802 of the Code of Commerce.

N.4. See Articles 755, 766 and 773 of the Code of Commerce.

See Articles 738, 755, 756, 802, 806 and following of the Code of Commerce.

³⁴⁹ Article 790. See Articles 773 and 790 of the Code of Commerce, in relation to the last two paragraphs.

See preceding Article. Also Articles 771, 772, 773, 775 and 791 of the Code of Commerce.

³⁵⁰ Article 791. See Articles 612.15, 623, 624, 755.3 and 8, 768, 789.1 and 3, 790, 792 to 795, 801, 802, 811.1, 840 and following of the Code of Commerce.

³⁵¹ Article 792. See Articles 612, 738, 765, 789, 790, 791, 793 and following, 811.4 and 817 of the Code of Commerce.

³⁵² Article 793. See Articles 795 and 797 of the Code of Commerce.

Article 794. If, in spite of the actions performed by the parties with an interest in the cargo, Master and insurers, to carry the freight to the port of destination, as provided within the preceding Articles, a ship is not found to perform the transport, the owner insured may abandon them.³⁵³

Article 795. In the event of interruption of the voyage due to embargo or forced detention of the ship, the insured shall be obliged to notify the insurers as soon as this comes to his knowledge, and he may not avail himself of the action of abandonment until the terms set in Article 793 have elapsed.

He shall also be obliged to provide the insurers all the assistance available to him to achieve removal of the embargo, and they must carry out the relevant formalities to that end themselves if, due to the insurers being in a remote country, they cannot be carried out in agreement with them.³⁵⁴

Article 796. Abandonment of the ship shall be understood to include the carriage fees for the freight salvaged, even when paid in advance, this being considered to belong to the insurers, notwithstanding the rights to which other creditors may be entitled, pursuant to the terms set forth in Article 580.³⁵⁵

Article 797. The news for prescription of the periods established in Article 793 shall be considered to have been received from publication, either in the newspapers, or from when it is considered certain among the businesspersons of the residence of the insured, or if it may be proved to him that notification of the claim was received by him by letter or telegram from the Master, from the consignee or a correspondent.³⁵⁶

Article 798. The insured shall also be entitled to avail himself of abandonment after one year has elapsed in the ordinary voyages and two on long ones, without news of the ship being received.

In this case, he may claim compensation from the insurer for the value of the sum insured, without being required to justify the loss; but he must also prove the lack of news by means of a certification extended by the Consul or maritime authorities of the port of departure, and also from the Consuls or maritime authorities at the place of destination of the ship and of registration, proving that she has not arrived there during the established period.

In order to make use of this action, he shall have the same period of time as that stated in Article 804, short voyages being considered those made to the coasts of Europe and those made to Asia and Africa within the Mediterranean Sea, and with regard to the American Continent, those undertaken to ports located nearer than River Plate and the San Lorenzo River, and the intermediate isles between the coasts of Spain and the points stated in this Article.³⁵⁷

Article 799. If the insurance has been taken for a limited period of time, there shall be the legal presumption that the loss occurred within the agreed period, except for any evidence that may be produced by the insurer proving that the loss arose after the agreed period of liability ended.³⁵⁸

Article 800. At the time of abandonment, the insured must list all the insurance policies taken on the property abandoned, as well as any bottomry loans taken thereon, and until he has made that statement, the period of time in which the value of the property is to be reimbursed shall not begin to elapse.

If he were to make a fraudulent statement, he shall then lose the insurance rights to which he would be otherwise entitled, without ceasing to be held liable for the loans he may have taken on the assets insured, notwithstanding their loss.³⁵⁹

Article 801. In the event of seizure of the ship, and when the insured has not had time to proceed in agreement with the insurer, nor to await his instructions, he may himself, or the Master, failing that, proceed to ransom the insured property, informing the insurer on the first occasion.³⁶⁰

³⁵³ Article 794. See Articles 789, 792, 793 of the Code of Commerce.

³⁵⁴ Article 795. See Articles 690.4, 789.3, 793, 797, 809.4 and 811.10 of the Code of Commerce.

³⁵⁵ Article 796. See Articles 580, 652.8, 658 and following and 789 of this Code.

³⁵⁶ Article 797. See Articles 784 and 793 of this Code.

³⁵⁷ Article 798. See Articles 738.12, 741, 789 and 804 of this Code.

³⁵⁸ Article 799. See Articles 738.11, 741, 744, 761 and 762 of this Code and 1,249 and following of the Spanish Civil Code.

³⁵⁹ Article 800. See Articles 758, 781.1, 782, 783 and 788 of the Code of Commerce.

³⁶⁰ Article 801. See Articles 623, 755.8, 765, 768, 789.3, 791, 802 and 811.1 of this Code.

He may or not accept the agreement entered into by the insured or the Master, notifying his decision within twenty-four hours following notification of the agreement.

If he accepts, he shall immediately reimburse the ransom amount agreed, and he shall bear the subsequent risks of the voyage, according to the conditions of the policy, losing all right to the goods ransomed; and if he does not state his decision within the period of time previously established, it shall then be understood that the agreement stands rejected.

Article 802. If, due to the ship being recaptured, the insured is restored the possession of his belongings, all the expenses and damages caused by the loss shall be deemed to be a claim, which the insurer must reimburse; and if, due to the recapture, the goods insured were to become the possession of a third party, the insured may avail himself to the right of abandonment.

Article 803. Once the abandonment has been accepted, or held acceptable by a court, the ownership of the items abandoned, with the improvements or damage that they may have suffered from the moment of abandonment, shall be conveyed to the insurer, without the latter being exonerated thereby of payment for the repairs to the ship legally abandoned.³⁶¹

Article 804. Abandonment shall not be permissible:

- 1.° If the losses have occurred before the journey has commenced;
- 2.° If it is performed partially or conditionally, without including all the objects insured,
- 3.° If the insurers are not informed of the intention to do so within four months of the day when the insured has received news of the loss that has taken place, and if the abandonment is not formalised within ten months, counted in the same way, for claims arising in the ports of Europe, those of Asia and Africa within the Mediterranean Sea, and those of the America Continent, from the River Plate to the San Lorenzo River, and within eighteen months with regard to any others;
- 4.° If not effected by the owner himself or person especially authorised by him or by the party commissioned to take out the insurance.³⁶²

Article 805. In the event of abandonment, the insurer must pay the amount of the insurance within the period of time set out in the policy and, if no period is specified therein, within 60 days from the acceptance of the abandonment, or if the statement specified in Article 803 has been made.³⁶³

³⁶¹ Article 803. See Articles 789 and following of the Code of Commerce.

³⁶² Article 804. See Articles 738.3, 789, 798, 799 and 803 of the Code of Commerce.

³⁶³ Article 805. See Articles 738.16 and 803 of the Code of Commerce.

TITLE IV

On risks, damages and accidents in maritime trade

SECTION ONE. On averages^{*364}

Article 806. For the purposes of the Code, the following shall be deemed averages:

- 1.° All extraordinary or eventual expenses that may arise whilst sailing, to safeguard the ship, the cargo or both.
- 2.° All damages or harm suffered by the ship from setting sail at the port of departure until landing and anchoring at that of her destination, and those suffered by the freight from loading at the port of dispatch until unloading at that of consignment.³⁶⁵

Article 807. The minor and ordinary expenses arising from navigation, such as those of coastal and port pilotage, those of launches and tugs, anchorage, inspections, health, quarantines, lazaretto and others known as port fees, chartering lighters and unloading until the freight is placed on the wharf, and any other common expenses of navigation, shall be considered ordinary expenses of the Shipper, unless there is a specific clause to the contrary.³⁶⁶

Article 808. Averages shall be:

- 1.° Common or particular;
- 2.° General or gross.

Article 809. As a general rule, common or particular averages shall be all expenses and damages caused to the ship or her cargo that have not inured on the benefit and common utility of all those interested in the ship and her cargo, and especially the following:

- 1.^a Damage arising to the cargo from loading until unloading, either due to inherent flaw of the items, as well as accident at sea or act of God or force majeure, and expenditure made to avoid and repair these;
- 2.^a Damages and expenses to the ship in her hull, rigging, weaponry and equipment, for the same causes and reasons, from her setting sail at the port of departure, until landing and anchoring at her destination;
- 3.^a Damage suffered by the freight loaded on deck, except in coastal navigation, if the maritime regulations allow;
- 4.^a The wages and food of the crew, when the ship is detained or embargoed by legitimate order or act of God or force majeure, if the charter contract is by a share in the voyage;
- 5.^a The necessary expenses of having to put into a port for repairs or stores;
- 6.^a The decreased value of goods sold by the Master on forcible putting in, to pay for food and save the crew, or to cover any other need of the ship, to which cargo will accrue the corresponding credits;
- 7.^a The food and salaries of the crew while the ship is in quarantine;

^{364*} On this subject, take into consideration the York-Antwerp Rules. Also, see Articles 2,131 and following of the Civil Procedure Act. On dispatch of failure protests by the Duty Court, see the Order dated 22nd November 1974 (Official State Gazette 290, dated 4th December).

³⁶⁵ Article 806. Take into consideration Article 309, on the general Ordinances for Customs Revenue, dated 22nd December 1955, cited above.

³⁶⁶ Article 807. See Article 811 of the Code of Commerce.

8.^a The damage suffered by the ship or cargo due to striking or colliding with another, when fortuitous and unavoidable;

If the accident occurs due to the fault or negligent behaviour of the Master, he shall be held liable for all the damages suffered.

9.^a Any damage caused to the cargo due to offences, negligence or barratry by the Master or crew, notwithstanding the right the owner has to take action against the Master, ship and charter for the relevant compensation.³⁶⁷

Article 810. The owner of the item that gave rise to the expense or that was damaged shall bear the particular or common average.³⁶⁸

Article 811. As a general rule, general or gross averages shall be all damages and expenses that are deliberately incurred to save the ship, her cargo or both, from a known, effective risk, and in particular the following:

- 1.^a Valuables or cash invested in ransoming the ship or cargo seized by enemies, privateers or pirates, and the food, salaries and expenses of the ship detained while the settlement or ransom is arranged;
- 2.^a Goods jettisoned to lighten the ship, whether belonging to the cargo, the ship or the crew, and the damage caused by that act to the property remaining on board;
- 3.^a Cables and spars cut or disabled, anchors and chains abandoned to save the cargo, ship or both;
- 4.^a The expenses of stocking or transferring part of the cargo to lighten the ship and make her ready to put into port or the roadsteads, and the damage this may cause to the goods stocked or transferred;
- 5.^a Damages caused to items of the cargo due to openings made in the ship to bail her out and to prevent her foundering,
- 6.^a Expenditure to refloat a ship run aground on purpose in order to save her;
- 7.^a Damage caused to the ship when it is necessary to open, hole or cause breakage to save the cargo,
- 8.^a The expense of curing and feeding crewmembers injured or damaged defending or saving the ship;
- 9.^a The salaries of any member of the crew taken hostage by enemies, privateers or pirates, and the necessary expenses arising from his imprisonment, until returned to the ship, or home if he prefers;
10. The salary and food of the ship's crew chartered by months, during the time she is embargoed or detained by act of God or force majeure or order of the Government, or to repair damages caused in common benefit;
11. Reduction of the value of goods sold on forcible putting into port to repair the ship due to general average;
12. The average's settlement expenses.³⁶⁹

³⁶⁷Article 809. N.1. See Articles 618, 619, 620, 624, 756.6 and 776 of this Code.

N.2. See Articles 618, 620 and 624 of the Code of Commerce.

N.3. See Articles 612.5, 755.6, 776, 811.2, 815, 816, 855 and 860 of this Code.

N.4. See Articles 640 and 641, paragraph 2 of the Code of Commerce.

N.5. See Articles 610.6, 611, 612.8 and 616 and 819 to 822 of the Code of Commerce.

N.6. See Articles 610.6, 611.5 and 616 of this Code.

N.7. See Articles 640 and 641, paragraph 2 of this Code

N.8. See Articles 618, 826 and following of the Code of Commerce.

Also, see Article 1,092 of the Spanish Civil Code and 809 of the Customs Ordinances, already cited.

³⁶⁸ Article 810. See Article 812 of this Code.

³⁶⁹ Article 811. See Articles 813, 814 and 818 of this Code.

N.1. See Articles 662, 789.3, 801, 802 and 806 of the Code of Commerce.

N.2. See Articles 612.5, 660, 755.6, 815, 816, 817, 860, 863 and 864 of this Code, as well as Article 617 of the Spanish Civil Code.

N.3. See Articles 816, 817, 860 and 864 of the Code of Commerce.

N.4. See Articles 755.7 and 817 of the Code of Commerce.

N.5. See Articles 813 to 818 of the Code of Commerce.

Article 812. All those with a share in the ship and cargo on her at the time of the average arising shall contribute to pay the amount of general or gross average.³⁷⁰

Article 813. Expenditure and causing the damage of the general average shall be preceded by a decision by the Master, following discussion with the Navigator and other officers on the ship, hearing the parties with an interest in the cargo who may be present.

Should these object and the Master and officers, or the majority thereof, or the Master not with the majority, deem certain measures necessary, these may be carried out under his responsibility, notwithstanding the right of the consignors to claim against the Master before the competent Judge or Court of Law, if they can prove that he acted with malice, lack of skill or negligence.

If those with an interest in the cargo, present on the ship, are not heard, they shall not contribute to the general average, that part being assigned to the Master, unless the urgency of the case is such that there is no time available for prior discussion.³⁷¹

Article 814. The decision made to cause damage constituting a gross average must necessarily be set forth in the ship's log, stating the motives and reasons upon which it was based, the votes against and the grounds for objection, if any, and the irresistible, urgent reasons that led the Master to do so, if he acted on his own accord.

In the first case, the minutes shall be signed by all present who know how to, if possible, before proceeding to execution thereof; and when it is not, at the first opportunity. In the second, by the Master and the ship's officers.

After the decision, the minutes shall circumstantially state all the objects jettisoned and mention shall be made of the defects caused to those remaining on board. The Master shall be obliged to deliver a copy of these minutes to the maritime judicial authorities at the first port he puts into, within twenty-four hours of arrival, and to then ratify it under oath.³⁷²

Article 815. The Master shall oversee the jettisoning and order the items to be thrown overboard in the following order:

- 1.º Those on deck, beginning with those that hinder handling or damage the ship, preferring, if possible, those that are heaviest and of less utility and value;
- 2.º Those under the upper deck, always beginning with those of most weight and less value, up to the quantity and number that are absolutely indispensable.³⁷³

Article 816. In order for them to claim in the general average and to be entitled to compensation, it shall be necessary for the owners of the belongings jettisoned to prove, with regard to the cargo, their presence on board by means of the bill of lading; and with regard to those belonging to the ship, by the inventory drawn up before departure, according to paragraph 1 of Article 612.³⁷⁴

N.6. See Articles 813 and 840 to 845 of this Code.

N.7. See Article 813 and following of this Code.

N.8. See Article 644, paragraph 2 of this Code.

N.9. See Articles 645, paragraph 6 and 809.4 and 7 of the Code of Commerce.

N.10. See Articles 640.4, 691 and 809.4 of the Code of Commerce.

N.11. See Articles 610.6 and 854 of the Code of Commerce.

N.12. See Articles 851 and following of this Code.

³⁷⁰ Article 812. See Articles 807, 810, 813 and 817 of the Code of Commerce.

³⁷¹ Article 813. Last paragraph. See Articles 610.6, 612.3 and 8, 618, 620, 649, 811, 812 and 814 to 818 of the Code of Commerce.

³⁷² Article 814. See Articles 2,173 and 2,174 of the Civil Procedure Act of 1881 and 34 of the Naval Mortgage Act dated 21 August 1893.

³⁷³ Article 815. N.2. See Articles 660, 755.6, 811.2, 813, 814 and 855 of the Code of Commerce, as well as Article 617 of the Spanish Civil Code.

³⁷⁴ Article 816. See Articles 612.1, 653, 811.2, 813 and following of the Code of Commerce.

Article 817. If, lightening the ship due to storm, to facilitate her entry to the port or roadsteads, any part of the cargo is transferred to launches or boats and is lost, the owner of that part shall be entitled to compensation, as that caused by loss in the general average, distributing their amount between the whole ship and the appropriate cargo.

If, on the contrary, the freight transferred is saved and the ship founders, no liability for salvage may be demanded.³⁷⁵

Article 818. If, as a necessary measure to stem fire in a port, roadsteads, creek or bay, it is decided to scupper any ship, that loss shall be considered a general average, to which the ships saved shall contribute.³⁷⁶

SECTION 2.^a On forcible arrival

Article 819. If, while sailing, the Master considers that the ship cannot continue her voyage to the destination port due to lack of provisions, justified fear of embargo, privateers or pirates, or due to any accident of the sea that may make her unseaworthy, he shall gather the officers, summon the parties with an interest in the cargo who are present and may attend the meeting, without the right to vote; and if, having considered the circumstances of the case, they consider the motive to be duly grounded, it shall be resolved to put into the nearest convenient port, drawing up and recording the appropriate minutes in the ship's logbook, which shall be signed by all present.

The Master shall have the casting vote and those with an interest in the cargo may make the complaints and protests they deem appropriate, which shall be written down in the minutes to be used as they see fit.³⁷⁷

Article 820. The putting in shall not be deemed legitimate in the following cases:

- 1.º If the lack of provisions were to be due to not having acquired the necessary stores for the voyage according to normal practice and custom, or if they have been used up or lost due to bad placement or negligent custody;
- 2.º If the risk of enemies, privateers or pirates is not well-known, manifest and based on positive, justifiable facts;
- 3.º If the damage to the ship is due to her not having been repaired, fitted out, equipped and arranged appropriately for the voyage, or to any incorrect provision by the Master;
- 4.º Whenever the fact or cause of the average is due to malice, negligence, lack of foresight or skill by the Master.³⁷⁸

Article 821. The expenses of forcible putting into port shall always be borne by the shipping agent or Shipper, although they shall not be held liable for the damages that may be caused to the consignors as a consequence of that arrival, provided this has been legitimate.

If the opposite were true, the shipping agent and the Master shall be jointly liable.³⁷⁹

Article 822. If, in order to repair the ship, or because there is danger of the cargo suffering damage, it is necessary to proceed to unload it, the Master must apply to the competent Judge or Tribunal for authorisation for it to be put into storage, and to carry this out with the party concerned, or representative of the cargo, if any.

At a foreign port, the Spanish Consul must provide authorisation, where there is one.

³⁷⁵ Article 817. See Article 811.4.7 and 812 of the Code of Commerce.

³⁷⁶ Article 818. See Articles 811 and 812 of the Code of Commerce

³⁷⁷ Article 819. See Articles 612.3, 616, 622, 624, 688.4, 820 and 825 of this Code, as well as Articles 2,173 and 2,174 of the Civil Procedure Act of 1881.

³⁷⁸ Article 820. See previous Article, Article 821 of this Code and Organic Act 12/1995, on Repression of Smuggling (Official State Gazette 297, dated 13th December).

N.1. See Articles 616 of this Code and 2,161.10 of the Civil Procedure Act of 1881.

N.2. See Articles 622 and 626 of the Code of Commerce.

N.3. See Articles 610.5 and 6 and 818 of the Code of Commerce.

N.4. See Article 618 of this Code.

³⁷⁹ Article 821. See Article 819 and 820 of the Code of Commerce.

In the former case, the shipping agent shall bear the expense and in the latter, they shall be borne by the owners of the freight in whose benefit the operation was performed.

If the unloading is performed for both reasons, the expenses shall be distributed proportionally between the value of the ship and the cargo.³⁸⁰

Article 823. Custody and conservation of the cargo unloaded shall be the remit of the Master, who shall be responsible for it, except for act of God or force majeure.³⁸¹

Article 824. If all the cargo or part of it were to be damaged, or if there is imminent danger of it being damaged, the Master may apply to the competent Judge or Court of Law, or to the Consul, if appropriate, for sale of all or part thereof, and the authority due to hear this must authorise it, following inspection and statement by appraisers, announcements and other appropriate formalities, and annotation in the book, as set forth in Article 624.

When appropriate, the Master shall justify the legality of his action, under penalty of liability to the consignor for the price that would have been obtained for the freight had it reached its port of destination.³⁸²

Article 825. The Master shall be held liable for damages caused by his delay if, once the reason that had rise to forcible putting into port has ceased, he does not continue the voyage.

If the reason for putting in was fear of enemies, privateers or pirates, prior to setting sail, the ship's officers and parties with an interest in the cargo who are present shall meet, discuss and resolve, pursuant to the terms of Article 819.³⁸³

SECTION 3^a On collisions^{*384}

Article 826. Should one ship collide with another, due to the fault, negligence or lack of skill of the Master, Navigator or any other member of the crew, the shipping agent of the ship that cause the collision shall compensate the damages and losses occurred, following appraisal.³⁸⁵

Article 827. If both vessels are to blame for the collision, each shall bear her own damages and both shall be held jointly and severally liable for the damages and losses caused to their cargos.

³⁸⁰ Article 822. See Articles 683, 688.5, 811.4, 812 and 821 of this Code. Also, see Articles 2,147 to 2,155 of the Civil Procedure Act of 1881.

³⁸¹ Article 823. See Articles 619, 620, 625, 822 and 825 of the Spanish Civil Code.

³⁸² Article 824. See Articles 612.3 and 624 of the Code of Commerce and Articles 2,161.1 to 3 of the Civil Procedure Act of 1881.

³⁸³ Article 825. See Articles 612.3, 622 and 819 of the Code of Commerce.

^{384*} See the International Convention of Brussels dated 23rd September 1910, for the Unification of Certain Rules of Law relating to Collision between Vessels (Official State Gazette number 347, dated 13th December 1923); International Convention of Brussels of 10th May 1952, for the Unification of Certain Rules Relating to Penal Jurisdiction, Matters of Collision, or other incidents of Navigation (Official State Gazette number 4, dated 4th January 1954); International Convention for the Safety of Life at Sea, signed in London on 1st November 1974, approved by Instrument dated 16th August 1978 (Official State Gazette 144, 145 and 146, dated 16th, 17th and 18th June 1980); and Amendments dated 20th November 1981 (Official State Gazette dated 21st July 1984 and 22nd and 23rd January 1985) 17th June 1983, (Official State Gazette dated 11th to 13th June 1986) 29th April 1987 (Official State Gazette dated 19th June 1989) 21st April 1988 (Official State Gazette dated 25th November 1989); 28th October 1988 (Official State Gazette dated 24th January 1990 rectified in Official State Gazette dated 8th March 1991) 9th November 1988 (Official State Gazette dated 19th May 1990); Protocol dated 17th February 1978, Instrument of Adhesion dated 9th April 1980 (Official State Gazette dated 4th May 1981), and Amendments dated 20th November 1981 (Official State Gazette dated 21st July 1984) and 10th November 1988 (Official State Gazette dated 14th May 1990), Royal Decree 1,661/1982, dated 25th June (Official State Gazette dated 24th July) that applies the rules of the Convention dated 1st November 1974 to national vessels, Order dated 10th June 1983 (Official State Gazette dated 29th and 30th September and 1st October), amended by that dated 31st January 1986, in turn amended by that dated 29th August that same year; Convention dated 20th August 1972, by which Spain adhered by Instrument dated 13th May 1974, on International Regulations for Preventing Collisions at Sea (Official State Gazette number 163, dated 9th July 1977) and Amendments approved on 19th November 1981 (Official State Gazette dated 23rd June 1983); Act 60/1962 dated 24th December, that regulates maritime rescue, salvages, towing, findings and extractions (Official State Gazette number 370, dated 27th December 1962) and Decree 984/1967 dated 20th April, approving the Regulations of the previous Act (Official State Gazette 117, dated 17th May).

³⁸⁵ Article 826. See Articles 1,902 and following of the Spanish Civil Code.

Article 828. The provision of the preceding Article is applicable in the event of it not being possible to determine which of the two ships has caused the collision.

Article 829. In the cases stated, this is notwithstanding civil action by the shipping agent against the party causing the damage, and any criminal liabilities that might arise.³⁸⁶

Article 830. If a ship were to collide with another for fortuitous reasons, act of God, or force majeure, each vessel and her cargo shall bear their own damages.

Article 831. If one ship were to collide with another, forced by a third, the damages and losses occurred shall be compensated by the shipping agent of that third ship, the Master being held civilly liable to that shipping agent.³⁸⁷

Article 832. If, due to the effect of a storm or another cause of force majeure or act of God, a ship that is duly moored and anchored collides with those immediately next to it, causing them average, the damage caused shall be considered a simple average of the ship collided with.³⁸⁸

Article 833. A ship that, having suffered collision, sinks immediately shall be considered lost due to collision, as shall a ship that, forced to put into port to repair the damage caused by the collision, is lost during the voyage or is forced to run aground to save herself.

Article 834. If the ships that collided had a pilot on duty on board at the time, collision in the presence of the master shall not exonerate the latter of the liabilities incurred; but he shall be entitled to compensation from the pilot, notwithstanding any criminal liability in which the pilot may have incurred.³⁸⁹

Article 835. The action to compensate the damages and losses arising from collisions may not be admitted if a protest or statement is not filed within twenty-four hours before the competent authority over the location where the collision takes place, or the first port of arrival of the ship, when in Spain, and before the Spanish Consul when abroad.³⁹⁰

Article 836. In the case of damage caused to persons or to the cargo, failure to protest shall not prejudice the rights of any parties concerned who were not on board or were not able to state their will.³⁹¹

Article 837. The civil liability contracted by the shipping agents in the cases specified in this Section shall be understood to be limited to the value of the ship with all her belongings and charter fees accrued on the voyage.³⁹²

Article 838. When the value of the ship and her belongings does not suffice to cover all the liabilities, compensation due to death or personal injury shall take preference.³⁹³

Article 839. If the collision takes place between Spanish ships in foreign waters, or if it takes place on the high seas and the ships arrive at a foreign port, the Spanish Consul in that port shall instruct a summary investigation of the events, sending the file to the Supreme Command of the nearest District for continuation of the proceedings and conclusion thereof.³⁹⁴

³⁸⁶ Article 829. See preceding Articles. Also Articles 263 and following, as well as 109 and following of the Criminal Code and 1,902 of the Spanish Civil Code.

³⁸⁷ Article 831. See Article 1,902 of the Spanish Civil Code.

³⁸⁸ Article 832. See Article 806, 809 and 810 of the Spanish Civil Code.

³⁸⁹ Article 834. See Articles 612.6 and 7, 620, 829 and 831 of the Code of Commerce.

³⁹⁰ Article 835. See Articles 612.3 and 8 and 624 of the Code of Commerce. See also Article 2,131 of the Civil Procedure Act of 1881. On the prescription of actions to claim compensation for collisions, see Article 953 of the Code of Commerce.

³⁹¹ Article 836. See previous Article and Articles 612.8 and 624 of the Code of Commerce.

³⁹² Article 837. See Articles 826 and following, 587 and 590 of this Code.

³⁹³ Article 838. See Article 837, 587 and 590 of this Code and 31 and 32 of the Naval Mortgage Act.

³⁹⁴ Article 839. See Article 835 of the Code of Commerce.

SECTION 4.^a On shipwrecks ^{*395}

Article 840. Losses and damages suffered by the ship and her cargo due to shipwreck or running aground shall be individually borne by the owners; the remains salvaged shall belong to them in the same proportion.³⁹⁶

Article 841. If the shipwreck or running aground is due to malice, negligence or lack of skill by the Master, or because the ship set sail while not sufficiently repaired and fitted out, the shipping agent or consignors may claim compensation from the Master for the damage caused to the ship or cargo due to the accident, as set forth in Articles 610, 612, 614 and 621.³⁹⁷

Article 842. The objects saved from the shipwreck shall be specifically bound to pay the expenses of the relevant salvage. Thus, the owners stand obliged to pay the relevant amount before they are delivered to them, with preference over any other obligation if the freight is sold.³⁹⁸

Article 843. If several ships are sailing together and one of them is wrecked, the cargo saved shall be distributed among the others in proportion to what each one may receive.

If any Master were to refuse to receive his part without due reason, the wrecked Master shall issue a protest against him before two sea officers, for the damages and losses he has thus caused, ratifying the protest within twenty-four hours of arrival at the first port and including it in the proceedings that must be conducted pursuant to the provisions of Article 612.

If it were not possible to transfer all the cargo from the wrecked ship to the other vessels, the objects of most value and those of least volume shall preferably be saved, as specified by the Master, acting in agreement with the officers on his ship.³⁹⁹

Article 844. The Master who has collected the goods saved from the wrecked ship shall continue his course to the port of destination and, on arrival, shall deposit them, with judicial intervention, at the disposal of their legitimate owners.

In the event of changing course, if able to unload at the port to which they were consigned, the Master may put in there if agreed by the consignors or pursers present and the officers and passengers on board the ship; however, he may not do so, even with that consent, in times of war, or when the port is difficult to access and hazardous.

All the expenses of that putting in shall be borne by the owners of the cargo, as well as the payment of any charter fees that, according to the circumstances of the case, are to be set by agreement or by judicial decision.⁴⁰⁰

Article 845. If there is no party with an interest in the cargo on board who may pay the relevant expenses and charter fees of the salvage, the competent Judge or Court of Law may order the sale of the necessary part to settle these with the revenue so obtained. The same shall be done when their conservation is hazardous, or when, after a year has elapsed, it has not been possible to ascertain who their legitimate owners were.

In both cases, the publicity and formalities set out in Article 579 shall be observed and the net proceeds from the sale shall be placed on safe deposit, in the opinion of the Judge or Court of Law, for delivery to the legitimate owners thereof.⁴⁰¹

^{395*} International Convention of Brussels dated 23rd September 1910, for Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, with a note of adhesion dated 17th November 1923 (Madrid Gazette, number 347, dated 13th December 1923).

Act 60/1962 dated 24th December, that regulates maritime rescue, salvages, towing, findings and extractions (Official State Gazette number 310, dated 27th December) and Decree 984/1967 dated 20th April, that approves the Regulations of said Act (Official State Gazette 117, dated 17th May).

³⁹⁶ Article 840. See Articles 643, 661, 662, 810 and 841 of the Code of Commerce.

³⁹⁷ Article 841. See Articles 624, 840, 842 and following of the Code of Commerce.

³⁹⁸ Article 842. See Articles 622 and 643 of this Code, as well as Article 2,161 of the Civil Procedure Act of 1881.

³⁹⁹ Article 843. See Articles 612, 614 and 835 of this Code.

⁴⁰⁰ Article 844. See Articles 2,119 and following of the Civil Procedure Act of 1881.

⁴⁰¹ Article 845. See Articles 579 and 842 of this Code as well as Article 2,161 of the Civil Procedure Act of 1881.

TITLE V

On justification and liquidation of averages^{*402}

SECTION ONE. Common provisions for all kinds of averages

Article 846. Those interested in the justification and settlement of averages may reach agreements and bind themselves mutually at any time concerning the liability, assessment and payment of these.

Should an agreement not be reached, the following rules shall apply:

- 1.^a Justification of the average shall be provided at the port where the repairs are performed, if necessary, or at that of unloading;
- 2.^a The settlement shall be performed at the port of unloading, if Spanish;
- 3.^a If the average has taken place outside the jurisdictional waters of Spain, or if the cargo has been sold at a foreign port due to forcible arrival, the settlement shall be performed at the port of arrival;
- 4.^a If the average has taken place near the port of arrival, so that port may be reached, the provisions set forth in rules one and two shall then apply.⁴⁰³

Article 847. Both in the event of performing a private settlement of damages due to agreement, as well as in that of intervention by the judicial authority at the request of any of the parties who object, they shall all be summoned and heard, unless they have waived this right.

When they are not present, or do not have a legitimate representative, the settlement shall be performed by the Consul at the foreign port and, where there is not one, by the competent Judge or Court of Law, according to the laws of the country, and on account of the relevant party.

When the representative is a person who is known in the place where the settlement is performed, his intervention shall be admitted and take legal effect, even if only authorised by way of a letter from the shipping agent, consignor or insurer.⁴⁰⁴

Article 848. Lawsuits for averages shall not be admissible if they do not exceed 5 per cent of the interest that the claimant had in the ship or cargo, being general averages, and 1 per cent of the goods damaged, if simple, and, in both cases, the appraisal expenses shall be deducted, except when otherwise agreed.⁴⁰⁵

Article 849. Damages, breakages, bottomry loans and their premiums, and any other losses, shall not accrue late payment interest except when the period of three years has elapsed, as of when the liquidation was concluded and notified to the parties with an interest in the ship, on the cargo, or both.⁴⁰⁶

Article 850. If, due to one or several accidents at sea, simple and general averages to the ship, cargo or both were to occur on a same voyage, these averages shall be determined, separating the expenses and damages belonging to each average, in the port where the repairs are carried out, or where the freight is unloaded, sold or realised.

To this end, the Masters shall be obliged to demand that the expert appraisers, and the master tradesmen who perform the repairs, as well as those who appraise or intervene in the unloading, correction, sale or realisation of the freight, to ensure absolute exactitude and separation of the damages and expenses belonging to each average

⁴⁰² * See the York-Antwerp Rules.

⁴⁰³ Article 846. See Articles 806 and following, 851 and 869 of this Code.

⁴⁰⁴ Article 847. See Articles 2,131 and following of the Civil Procedure Act of 1881.

⁴⁰⁵ Article 848. See Articles 809 and following, 846, 851 and following of the Code of Commerce.

⁴⁰⁶ Article 849. See Articles 60 to 63 and 851 to 869 of the Code of Commerce.

in each of their appraisals or estimates, and in those of each average, those of the ship and cargo, also providing a breakdown of whether or not there is damage due to inherent flaw of the item and not to sea accident; and if there are common expenses of the different averages and the ship and her cargo, the relevant amount for each item must be calculated and stated separately.⁴⁰⁷

SECTION 2.^a On liquidation of general averages ^{*408}

Article 851. When requested by the Master, private proceedings shall be conducted, by agreement between all the parties concerned, to settle, liquidate and distribute general averages.

To this end, within forty–eight hours of the ship arriving in port, the Master shall summon all parties concerned to establish whether the settlement or liquidation of the general averages must be performed by appraisers and liquidators appointed by themselves, in which case this shall be done so, if there is agreement between those concerned.

If an agreement is not possible, the Master shall resort to the competent Judge or Court of Law, which shall be that of the port where those proceedings are to be carried out, according to the provisions of this Code, or the Spanish Consul, if any, and if not, the local authority when this is to be performed in a foreign port.⁴⁰⁹

Article 852. If the Master does not fulfil the terms set forth in the preceding Article, the shipping agent or the consignors shall demand the liquidation, notwithstanding any action by which they are entitled to claim compensation from him.

Article 853. Upon appointment of the appraisers by the parties concerned, or by the Judge or Court of Law, they shall proceed, following acceptance, to inspect the ship and the repairs she needs and to appraise their value, distinguishing these losses and damages from those due to inherent flaw in the goods.

The appraisers shall also determine whether the repairs may be carried out right away, or whether it is necessary to unload the ship to inspect and repair her.

With regard to the freight, if the damage is visible to the naked eye, the inspection thereof must be performed before delivery. Should it not be visible at the time of unloading, this may be performed after delivery, provided this is checked within forty–eight hours of unloading, notwithstanding any other evidence deemed relevant by the appraisers.⁴¹⁰

Article 854. The valuation of the objects that are to contribute to the general average, and of those constituting the damage, shall be subject to the following rules:

- 1.^a Freight salvaged that is to contribute to payment of the general average shall be valued at the current price at the port of unloading, after charter fees, customs dues and unloading expenses are deducted, as recorded in their material inspection, ignoring what is recorded in the bills of lading, except when otherwise agreed;
- 2.^a If it is necessary to perform the liquidation at the port of departure, the value of the freight loaded shall be set at its purchase price plus all relevant expenses until placed on board, excluding the insurance premium;
- 3.^a If the freight is damaged, it shall be appraised at its real value,
- 4.^a If the voyage has been interrupted, freight has been sold abroad and the average cannot be calculated, it shall be ascertained by capital contribution to the value of the freight at the port of arrival, or the liquid product obtained from its sale;

⁴⁰⁷ Article 850. See Articles 806 and following, 846 and following of this Code.

^{408*} See Articles 811 to 818, 846 and following of the Code of Commerce.

⁴⁰⁹ Article 851. See note on Article 578 of this Code.

⁴¹⁰ Article 853. See Articles 854 and following of this Code. See also Articles 2,134 and following of the Civil Procedure Act of 1881.

5.^a Lost freight constituting the general average shall be appraised pursuant to the value that those of their class have at the port of unloading, provided their types and qualities are recorded on the bills of lading; and if they are not recorded, the content of the purchase invoices issued at the port of loading shall apply, increased by the sum of the expenses and carriage fees that have subsequently arisen;

6.^a Cut spars, sails, cables and other rigging of the ship disabled in order to save her shall be appraised at their current value, minus one third for the difference from new to old;

This reduction shall not apply to anchors and chains.

7.^a The ship shall be appraised at her real value in the state in which she is;

8.^a The carriage fees shall represent fifty per cent as contributing capital.⁴¹¹

Article 855. The freight loaded in the waist of the ship shall contribute to the general average if saved; but they shall not provide entitlement to compensation if they are lost having been jettisoned in common salvage, except when in coastal navigation, the maritime regulations allow such loading.⁴¹²

The same shall apply to those on board that are not included on the bills of lading or inventories, as appropriate.

In any case, the Shipper and the Master shall be held liable to the consignors for the damages of jettison, if placement in the waist is performed without their consent.

Article 856. Cannons and war munitions carried on board shall not contribute to the general average, nor the clothes and garments used by the Master, officers and crew.

The clothes and garments used by the consignors, pursers and passengers on board at the time of the jettison shall not be included either.

Nor shall the goods jettisoned contribute to payment of the general averages arising to freight salvaged in a different, later risk.

Article 857. Once the appraisers have concluded valuation of the goods salvaged and those lost that constitute the general average, and once the repairs to the ship are performed, if this is appropriate, and in that case, following approval of their accounts by the parties concerned, or by the Judge or Court of Law, the full dossier shall be transferred to the liquidator appointed so he may proceed to distribute the average.⁴¹³

Article 858. To perform the assessment, the liquidator shall examine the protest by the Master, checking it, if necessary, against the ship's log, and all the contracts formalised between the parties concerned in the average, the appraisals, expert inspections and bills for repairs performed. If, as the result of that examination, he were to find any defect that might be damaging to the rights of the parties concerned or affect the liability of the Master, he shall call attention to this in order for it to be corrected, if possible, and if not, shall record this in the preliminaries of the assessment.

He shall then proceed right away to distribute the amount of the average, for which he shall set:

1.^o The contributing capital, which he shall determine by the amount of the value of the cargo, according to the rules established in Article 854;

2.^o That of the ship, in the state in which she is, according to the report prepared by the appraisers;

3.^o Fifty per cent of the amount of the carriage fees, minus the remaining fifty per cent for salaries and crew's food.

⁴¹¹ Article 854. See Articles 846, 858 and 869 of the Code of Commerce.

N.5. See Article 660 of the Code of Commerce.

N.6. See Article 772 of the Code of Commerce.

⁴¹² Article 855. See Articles 612.5, 660, 811.2, 813 to 815, 846 and following of the Code of Commerce.

⁴¹³ Article 857. See Articles 2,142 and 2,143 of the Civil Procedure Act of 1881.

Once the sum of the general average is determined according to the provisions of this Code, the resulting amount shall be distributed proportionally among those called to bear it.⁴¹⁴

Article 859. The insurers of the ship, of the charter fees and cargo shall be obliged to pay the full sum required for each one of these objects, respectively, in compensation of the general average.⁴¹⁵

Article 860. If, notwithstanding the jettison of goods, breaking of spars, ropes and rigging, the ship were to be lost, running the same risk, there shall be no entitlement to any contribution whatsoever for the general average.

The owners of the goods salvaged shall not be liable for compensation of those cast into the sea, lost or deteriorated.⁴¹⁶

Article 861. If, after having saved the ship from the risk that gave rise to the jettison, she were to be lost due to another accident on the voyage, the goods saved and subsisting from the first risk shall continue to be encumbered for contribution to the general average, according to their value in the state in which they are, deducting the expenditure on their salvage.⁴¹⁷

Article 862. If, in spite of having saved the ship and cargo due to cutting spars or any other deliberate damage to the ship for that purpose, the freight is subsequently lost or stolen, the Master may not require the consignors or consignees to contribute to compensation of the average, except if the loss arises due to an act by the actual owner or consignee.⁴¹⁸

Article 863. If the owner of the freight jettisoned recovers it before having received compensation for the general average, he shall be bound to return the sum received to the Master and other parties with an interest in the cargo, deducting the amount for the damage caused by the jettison and the expenses incurred to recover it.

In that case, the sum returned shall be distributed between the ship and the parties with an interest in the cargo, in the same proportion to their contribution to payment of the average.⁴¹⁹

Article 864. If the owner of the goods jettisoned recovers them without having claimed compensation, he shall not be obliged to contribute to payment of the general averages to the rest of the cargo after the jettison.⁴²⁰

Article 865. Distribution of the general average shall not take executive effect until granted conformity, or failing that, after approval by the Judge or Court of Law, following examination of the liquidation and trial hearing of the parties present or their representatives.⁴²¹

Article 866. Once the liquidation is approved, the Master must settle the moneys to be distributed and he shall be liable to the owners of the goods damaged for the losses his delay or negligence might cause them.⁴²²

Article 867. If the contributors did not settle the amount that they are to contribute by the third day after having been required to do so, proceedings shall be taken, at the request of the Master, against the goods salvaged, until payment is settled from the revenue thereof.⁴²³

⁴¹⁴ Article 858. See Articles 612.3, 624 and 777 of the Code of Commerce and 2,140 of the Civil Procedure Act of 1881.

⁴¹⁵ Article 859. See Article 777 of the Code of Commerce.

⁴¹⁶ Article 860. See Articles 811.2 and 3, 846 and following and 863 of the Code of Commerce.

⁴¹⁷ Article 861. See Articles 811.12, 850 and 856 of the Code of Commerce.

⁴¹⁸ Article 862. See Article 811.3 of the Code of Commerce.

⁴¹⁹ Article 863. See Article 811.2 and 864 of the Code of Commerce.

⁴²⁰ Article 864. See Articles 811.2 and 863 of the Code of Commerce.

⁴²¹ Article 865. See Article 849 and 587 of the Code of Commerce and 2,143 and 2,146 of the Civil Procedure Act 1881.

⁴²² Article 866. See Articles 849, 857, 865 and 867 of the Code of Commerce and 2,144, 2,145 and 2,146 of the Civil Procedure Act of 1881.

⁴²³ Article 867. See Articles 665, 666, 849 and 866 of this Code and 2,146 of the Civil Procedure Act of 1881.

Article 868. If the party applying to receive the goods salvaged does not provide sufficient surety to respond for the relevant part of the general average, the Master may defer their delivery until payment is made.⁴²⁴

SECTION 3^a On liquidation of simple averages

Article 869. The appraisers that the Judge or Court of Law or parties concerned may appoint, as appropriate, shall proceed to inspect and assess the damages in the manner specified in Articles 853 and 854, rules 2 to 7, as applicable.⁴²⁵

BOOK IV

On temporary receivership, bankruptcies and prescription

TITLE ONE

On temporary receivership and bankruptcy in general ^{*426}

Article 870 to 941. (...)

TITLE II

On prescription

Article 942. The periods of time set out by this Code to exercise the appropriate actions over business contracts shall be final, without any restitution against them being possible.

Article 943. Actions that do not have a specific period for filing before the courts by virtue of this Code shall be governed by the provisions of ordinary Civil Law.⁴²⁷

Article 944. Prescription shall be interrupted by the filing of a claim or by any other kind of judicial request brought against the debtor; by the recognition of the obligations, or by the renewal of the document on which the right of the creditor is based.

The prescription period shall be considered not to have been interrupted by a claim filed, provided that the plaintiff withdraws it, or if the application were to expire, or if the claim were to be rejected.

The prescription period shall begin to be counted again in the event of recognition of the obligations, as from the day on which this takes place; in that of its renewal, as from the date of the new title; and if the term for fulfilment of the obligation has been extended, as from the date in which it falls due.⁴²⁸

Article 945. The liability of Exchange Agents, Stockbrokers or Maritime Interpreters for the obligations they intervene in due to their profession shall prescribe after three years.

⁴²⁴ Article 868. See Article 665 and 867 of the Code of Commerce.

⁴²⁵ Article 869. See Articles 809 and 810 of the Code of Commerce and 2,134 of the Civil Procedure Act of 1881.

⁴²⁶ * The Sole Final Provision of Act 22/2003 of 9th July, on Bankruptcy, has repealed Articles 870 to 941.

⁴²⁷ Article 943. See Articles 1,961 and following of the Spanish Civil Code.

⁴²⁸ Article 944. See Article 479 of the Civil Procedure Act 1881.

Article 946. Executive action against the deposit by Intermediary Agents shall only last six months, from the date of receipt of the public securities, commercial paper or funds delivered to them for the negotiations, except in the cases of interruption or suspension set out in Article 944.⁴²⁹

Article 947. Actions to which the partner is entitled against the company, or vice-versa, shall prescribe after three years, counted, according to the cases, from the severance of the partner, his exclusion, or the dissolution of the company.

In order for that period to elapse, it shall be necessary to register the severance of the partner, his exclusion, or the dissolution of the company at the Business Registry.

The right to receive dividends or payments agreed and accruing from securities or capital on part of the shares to which each partner is entitled in the corporate assets shall also prescribe after five years, as from the day set for their collection.⁴³⁰

Article 948. Prescription to the benefit of a partner who resigned from the company or was severed from it, when duly recorded in the manner determined in the preceding Article, shall not be interrupted by any judicial proceedings taken against the company, or against another partner.

Prescription in favour of a partner who was a member of the company at the moment of its dissolution shall not be interrupted by judicial proceedings brought against another partner, but it shall be by those brought against the liquidators.⁴³¹

Article 949. Action against the managing partners and directors of companies or firms shall prescribe after four years, from them ceasing to hold office as directors for any reason.⁴³²

Article 950. Actions arising from bills of exchange shall be extinguished after three years from their maturity date, whether or not they have been noted.

The same rule shall apply to issuances and commercial promissory notes, drawing cheques, bank cheques and other giro or exchange documents, to dividends, coupons or amount of repayment of debentures issued pursuant to this Code.⁴³³

Article 951.⁴³⁴ Actions related to the collection of transport and carriage fees, expenses inherent to them and contribution to common averages, shall prescribe six months after delivering the goods that gave rise to them.

The right to collect passage shall prescribe after the same period, as of the day on which the traveller arrived at his destination, or that on which he should have paid it.

Article 952.⁴³⁵ The following shall prescribe after a year:

1. Actions arising from services, works, provisions and supplies of goods or money to build, repair, fit out or stock ships or to maintain their crew, as from the delivery of the goods and money, or the periods specified for their payment, and from the provision of services or work, if these are not contracted for a specific period of time or voyage. If they are, the prescription period shall begin to be counted from the end of the voyage or of the contract to which they refer; and if there is an interruption of these, from the service definitively ceasing.

⁴²⁹ Article 946. See paragraph two of Article 98 of this Code.

⁴³⁰ Article 947. Specifically declared in force by Decree dated 14th December 1951 (Official State Gazette number 363, dated 29th December), in relation to Public Limited Companies.

⁴³¹ Article 948. See Articles 107 and 167 of the Public Limited Companies Act.

⁴³² Article 949. Specifically declared in force by Decree dated 14th December 1951 (Official State Gazette number 363, dated 29th December), in relation to Public Limited Companies.

⁴³³ Article 950. Repealed by the Repeal Provision of the Bills of Exchange and Cheques Act with regard to the prescription of actions arising from securities regulated under that Act. See Articles 87 and 88 and 56 and 157 of the Act.

⁴³⁴ Repealed, insofar as it pertains to transport of merchandise by land, by Sole Repealing Provision 1.a) of Act 15/2009, dated 11th November.

⁴³⁵ Repealed, insofar as it affects the terrestrial transportation of merchandise, by Sole Repealing Provision 1.a) of Act 15/2009, dated 11th November.

2. Actions on delivery of cargo in transport by land or sea, or on compensation for delays and damages suffered by the objects transported, the period of prescription being counted as from the day the cargo is delivered at the destination thereof, or from that when it should have taken place, according to the terms of carriage.

Actions for damages or offences may not be taken if, at the time of delivery of the respective expeditions, or within the following twenty-four hours, in the case of damages that are not visible on the exterior of the packages received, these are not formalised in the respective protests or reservations.

3. Actions over expenses of the judicial sale of ships, cargos or goods transported by land or sea, as well as those of custody, deposit and conservation, and navigation and port fees, pilotage, rescue, aid and salvage, from the time when the expenditure has been made and the aid provided, or from the conclusion of the proceedings, if formalised on the case.

Article 953. The actions to claim compensation for collisions shall prescribe two years after the claim.

These actions shall not be admissible if the appropriate protest is not made by the Master of the ship damaged, or whoever may be standing in for him in his duties, at the first port of arrival, according to paragraphs 8 and 15 of Article 612, when these arise.

Article 954. Actions arising from bottomry loans or maritime insurance shall prescribe three years from conclusion of the respective contracts or from the date of the loss giving rise thereto.

TITLE III

General provision

Article 955. In cases of war, officially declared epidemic or revolution, the Government may suspend the effects of the time periods specified in this Code, by resolution of the Council of Ministers and informing Parliament thereof, for the purposes of business operations, determining the locations or towns in which said suspension shall be deemed expedient, when the suspension need not be applied throughout the Realm.

