

CHAPTER 13

COMMERCIAL CODE

To amend and consolidate the Laws relating to Trade.

ORDINANCES XIII of 1857, XV, XVI, XVII, XVIII and XIX of 1858 and II of 1898, and ACTS: XIV and XXIX of 1933 - as amended by Ordinances: III of 1863, VII of 1868, V of 1904; Acts: XV of 1924, XXX of 1927, XII of 1929; Ordinances: XXX of 1931, XXXVII of 1939 and VII of 1941 - Consolidated.*

The Code was subsequently amended by Ordinances: XVIII of 1944, XIII of 1946, X and XXV of 1962; Legal Notices 4 of 1963 and 46 of 1965; Acts: XXXI of 1966, XI and XLVI of 1973 and LVIII of 1974; Legal Notice 148 of 1975; Acts: XXII of 1976, [XLIX of 1981](#), [IX](#) and [XVI of 1982](#), [XIII of 1983](#), [XXXVII of 1988](#), [VIII](#) and [XXXIII of 1990](#), [XXIV of 1995](#), [XVI of 2000](#), [XXXI of 2002](#), [IX of 2003](#) and [XXII of 2005](#); Legal Notices [233 of 2005](#), [181 of 2006](#) and [407 of 2007](#); Acts [II](#) and [XIII of 2008](#), and [XXIII of 2009](#); and Legal Notices [272 of 2012](#) and [13 of 2014](#) and Act [XXIII of 2022](#).

(2nd October, 1857)
(21st December, 1859)[†]
(26th April, 1898)[‡]
(12th May, 1939)[§]
(3rd August, 1933)**

*See Proclamation No. XXI of the 2nd of October, 1857.

†See Proclamation No. XII of the 21st of December, 1859.

‡See Proclamation No. II of the 26th of April, 1898.

§See Proclamation No. XXV of the 12th of May, 1939.

**See Act No. V of 1927 omitted under the Statute Law Revision Ordinance, 1936, and Government Notice. No. 266 of the 18th of July, 1933

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1. This Code may be cited as the Commercial Code.

Short title.

PART I

OF TRADE IN GENERAL

PRELIMINARY PROVISIONS

Preliminary provisions added by Act XXX of 1927.

2. The commercial law relates to traders and to acts of trade done by any person, even though not a trader and, for the purposes of Part III alone:

Persons and acts affected.
Substituted by:
[XXIII.2022.3.](#)

- (a) extends to the persons referred to in article 477;
- (b) shall not extend:
 - (i) to public corporations or agencies established by law;
 - (ii) where any applicable law creates a separate patrimony in the hands of a person or where a person is vested with ownership, has registered in his name, holds, exercises control or powers of disposition over property subject to fiduciary obligations;
 - (iii) to any accrued occupational pension entitlements;
- (c) shall not extend insofar as these may be inconsistent with, or insofar as these may be construed as limiting or restricting, the application of the following laws or instruments, or any transposing legislation, as may be amended from time to time:
 - (i) the Convention on International Interests in Mobile Equipment and its Protocol on Matters Specific to Aircraft Equipment that was opened for signature at Cape Town on 16 November 2001, as transposed or as enforceable in terms of Maltese law;
 - (ii) Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, as transposed in terms of Maltese law;

(iii) Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, as transposed in terms of Maltese law;

(iv) Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

(v) the safeguarding requirements of funds for:

(aa) payment institutions laid down under Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No. 1093/2010, and repealing Directive 2007/64/EC, as transposed in terms of Maltese law; and

(bb) electronic money institutions laid down under Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, as transposed in terms of Maltese law;

S.L. 459.01.

(vi) the [Financial Collateral Arrangements Regulations](#) and any financial collateral arrangement in terms thereof;

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(vii) the [Set-Off and Netting on Insolvency Act](#).

Applicability of law.

3. In commercial matters, the commercial law shall apply:

Provided that where no provision is made in such law, the usages of trade or, in the absence of such usages, the civil law shall apply.

Title I

OF TRADERS AND ACTS OF TRADE

Provisions of this Title substituted by Act XXX of 1927.

4. The term "trader" means any person who, by profession, exercises acts of trade in his own name, and includes any commercial partnership:

Definition of
"trader".
Amended by:
[XXIII.2022.4.](#)

Provided that, for the purposes of Part III, the term "trader" shall have the meaning assigned to it in article 477.

5. The following are acts of trade:

Acts of trade.

- (a) any purchase of movable effects for the object of re-selling or letting them, whether in their natural state or after being worked or manufactured; any sale or lease of movable effects, in their natural state or after being worked or manufactured, when the purchase thereof has been made with the object of re-selling or letting such effects;
- (b) any banking transaction;
- (c) any transaction relating to bills of exchange;
- (d) any time-bargain in securities;
- (e) any transaction relating to commercial partnerships or to shares in such partnerships;
- (f) any transaction relating to vessels and navigation;
- (g) any undertaking relating to supplies, manufacture, construction, carriage, insurance, deposits, public entertainment and advertising;
- (h) any purchase and any re-sale of immovable property, when made with the object of commercial speculation, and any building enterprise;
- (i) any transaction ancillary to or connected with any of the above acts.

6. Obligations arising from collision of vessels, assistance or salvage in case of wreck, stranding or abandonment, from jettison or average are likewise commercial matters.

Other commercial
matters.

7. Every act of a trader shall be deemed to be an act of trade, unless from the act itself it appears that it is extraneous to trade.

Presumption as to
nature of act done
by trader.

8. Any person capable of contracting, may trade, unless the law precludes him from carrying on trade.

Persons who may
carry on trade.

9. A minor who has attained the age of sixteen years, may trade and shall be deemed to be a major with regard to obligations contracted by him for purposes of trade, if -

Minors.
Amended by:
[XLVI.1973.108;](#)
[XXIV.1995.362.](#)

- (a) he has previously been authorized to that effect by the parent to whose authority he is subject, by means of a public deed registered in the Civil Court, First Hall; or, where both parents are dead, interdicted or absent, he has been authorized by the judge of the Civil Court, First Hall; and
- (b) a summary of the deed of authorization or of the decree aforementioned has been published by means of a notice in the Exchange, in the Government Gazette

and in another newspaper.

Powers of minors
who are traders.

10. Minors who are traders authorized as aforesaid can by reason of their trade charge, hypothecate and even alienate their property, without any of the formalities prescribed by the civil law.

Applicability of ss.
9 and 10 to minors
non-traders.

11. The provisions of articles 9 and 10 shall apply to minors not being traders, with respect to acts declared to be acts of trade.

Revocation of
authority by
parent.
Amended by:
XLVI.1973.108;
XXIV.1995.362.

12. (1) The authority granted to a minor by the parent vested with parental authority to carry on trade may, at any time, be revoked by the parent exercising such authority by means of a public deed duly served on the minor.

(2) The deed of revocation shall be registered in the Civil Court, First Hall, and published by means of a notice in the Exchange, in the Government Gazette and in another newspaper.

(3) Such revocation shall in no case injuriously affect the rights acquired by a third party, even in regard to transactions which are still in the course of negotiation.

Title II

OF THE DUTIES OF TRADERS

*Provisions of this
Title substituted by
Act XXX of 1927.*

Sub-title I

OF TRADE BOOKS

Obligatory trade
books.
Amended by:
XIII.1946.2.

13. Every trader is bound to keep the following books:

- (a) a waste-book;
- (b) a journal;
- (c) a cash-book;
- (d) an inventory-book;
- (e) a ledger.

Waste
-book.

14. Every trader shall immediately enter in the waste-book every commercial transaction which he makes, showing all the conditions or terms to which it is subject.

Journal.

15. The journal must show day by day all the transactions concluded by the trader, his debts and credits, his negotiations, acceptances and endorsements of bills, and, generally, all that he receives or pays for any cause whatsoever; and must show month by month the sums disbursed for household expenses.

Cash-book.

16. The cash-book must show in detail, day by day, all the

sums received and those paid out by the trader, compared with the journal; it must be balanced at least once a month.

17. (1) The trader shall make every year an inventory containing a description and valuation of his whole estate, assets and liabilities, whatever may be their nature and origin.

Inventory-book.

(2) The annual inventory shall be closed with a balance and with a statement showing the profits and losses, and shall be copied out year by year in the aforesaid inventory-book.

18. The ledger shall show an accurate and up-to-date record of all transactions classified as personal and impersonal accounts and so kept as to render possible the drawing up of a true and correct picture of the state of affairs of the business or trade at any given time.

Ledger.
Added by:
XIII.1946.3.

19. Besides the books mentioned in the foregoing articles of this sub-title, traders may keep other books and other papers wherefrom the extent and the progress of their business shall appear in a more detailed manner.

Optional trade books.

20. Every trader shall keep, by order of date, the original of all letters, invoices and telegrams received by him, and a copy, whether hand-written or type-written, or a press-copy, of all letters, invoices and telegrams forwarded by him.

Duty of trader to keep letters, etc., received or forwarded by him.

21. (1) All books which traders are required to keep, with the exception of the waste-book, shall be numbered and kept, by order of date, without blanks or marginal notes.

Formalities to be observed in the keeping of trade books.
Amended by:
XXXVII.1939.2.

(2) Whenever it shall be necessary to make any cancellation, this shall be made in such a manner as to leave the cancelled words legible.

(3) The provisions of this article shall not apply to such books as were already in use before the first day of January nineteen hundred and twenty-eight.

22. (1) Trade books, whether obligatory or optional, shall constitute evidence in terms of the [Code of Organization and Civil Procedure](#).

Proof by books.
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(2) Nevertheless, it shall not be lawful to divide the contents of such books.

23. (1) In the course of an action, the court may, at the instance of one of the parties or of its own motion, order the production of all correspondence touching the question at issue, and of the trade books in order to abstract therefrom such portion only as relates to the controversy.

Power of court to order production of correspondence, etc.

(2) In such case, a qualified accountant chosen by agreement between the parties or, in default, nominated *ex officio* by the court, may be appointed in order to ascertain, without removing the books and in the presence of the person producing them, whether such books are in order, and to abstract therefrom such entries as relate to the controversy.

(3) The opposite party may in counter-evidence produce his

own books kept according to law.

General
examination of
books.

24. In cases of winding up or liquidation of a partnership, or of property in community or of successions, the court shall have power to allow the examination of all the books subject to such conditions and formalities as the court may in each case prescribe.

Retailers.

25. Retail traders are not bound to enter in their books the sales made for ready cash: it will be sufficient for them to enter each day the total amount of the sales made on such day.

Period for
preserving books,
etc.

26. Traders are bound to keep their trade books, letters, invoices and telegrams received by them, for a period of five years to be reckoned, in the case of trade books, from the date of the last entry made in each book.

Added by:
[L.N. 233 of 2005](#).
Substituted by:
[L.N. 272 of 2012](#);
[L.N. 13 of 2014](#).

Sub-title IA

OF LATE PAYMENTS IN COMMERCIAL TRANSACTIONS

Definitions for the
purposes of this
Sub-Title.
Added by:
[L.N. 233 of 2005](#).
Substituted by:
[L.N. 272 of 2012](#);
[L.N. 13 of 2014](#).

26A. For the purposes of this Sub-Title:

"amount due" means the principal sum which should have been paid within the contractual period of payment, including, where applicable, taxes, duties, levies or charges specified in the invoice;

"commercial transactions" means transactions between undertakings or between undertakings and public authorities, which lead to the delivery of goods or the provision of services for remuneration;

"[Commission Directive 2006/111/EC](#)" means the Commission Directive of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings;

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"executive title" has the same meaning as is assigned to it in Title VII of Part I of the [Code of Organization and Civil Procedure](#), and the provisions of that title shall apply thereto;

"interest for late payment" means legal interest for late payment or interest at a rate agreed between the undertakings, subject to the provisions of article 26G;

"invoice" means a bill sent by a provider of a product or service to the purchaser. The invoice establishes an obligation on the part of the purchaser to pay. For the purpose of this definition, "invoice" includes an equivalent request for payment;

"late payment" means payment not made on the date agreed upon in the contract or according to law, and on the fulfilment of the

conditions laid down under article 26C(1) and article 26D(1);

"legal interest for late payment" means simple interest for late payment at a rate which is equal to the sum of the reference rate and at least eight percent (8%);

"public authority" means the Government of Malta, the Local Councils or bodies governed by public law, associations formed by one or several of such authorities or bodies governed by public law.

For the purpose of this definition, "a body governed by public law" means a body which:

- (a) is established for the specific purpose of meeting needs in the general interest, not being of an industrial or commercial nature;
- (b) has legal personality; and
- (c) is financed for the most part by the State, or Local Councils or other public bodies, or is subject to management supervision by those bodies, or has an administrative, managerial or supervisory board more than half of whose members are appointed by the State, Local Councils, or other public bodies;

"reference rate" means the interest rate applied by the European Central Bank to its most recent main refinancing operations, or the marginal interest rate resulting from variable-rate tender procedures for the most recent main refinancing operations of the European Central Bank;

"undertaking" means any organization, other than a public authority, acting in the course of its independent economic or professional activity, even where that activity is carried out by a single person.

26B. The provisions of this Sub-Title shall, notwithstanding the provisions of any other law, apply to payments made as remuneration for commercial transactions carried out between private and public undertakings, between undertakings and public authorities, and between main contractors and their suppliers and subcontractors, as from 1st March, 2012:

Provided that this Sub-Title shall not regulate transactions between consumers, interest in connection with other payments such as payments under the laws on cheques and bills of exchange, or payments made as compensation for damages including payment from insurance companies.

26C. (1) In the case of transactions between undertakings, the creditor shall be entitled to interest for late payment, without the need of a reminder, to the extent that it:

- (a) has fulfilled its contractual and legal obligations; and
- (b) has not received the amount due on time, unless the debtor is not responsible for the delay.

(2) The creditor may proceed with the claim of interest for late

Scope of this
Sub-title.
Added by:
[L.N. 233 of 2005.](#)
Substituted by:
[L.N. 272 of 2012;](#)
[L.N. 13 of 2014.](#)

Interest in the case
of late payment in
transactions
between
undertakings.
Added by:
[L.N. 233 of 2005.](#)
Substituted by:
[L.N. 272 of 2012;](#)
[L.N. 13 of 2014.](#)

payment against the debtor without reminding the debtor that the amount is due.

(3) On fulfilment of the conditions under sub-article (1), the creditor shall be entitled to interest for late payment from the day following the date or the end of term for payment fixed in the contract:

Provided that when the date or term for payment is not fixed in the contract, the creditor shall be entitled to interest for late payment upon the expiry of any of the following time limits:

- (a) thirty calendar days following the date of receipt by the debtor of the invoice;
- (b) thirty calendar days after the date of receipt of the goods or services, when the date of the receipt of the invoice is uncertain;
- (c) thirty calendar days after the date of the receipt of the goods or services, when the debtor receives the invoice earlier than the goods or services;
- (d) thirty calendar days after the date when according to law as agreed or in the contract the product has to be ascertained or verified, and the debtor receives the invoice earlier or on the date on which such acceptance or verification takes place:

Provided further that the parties to a contract may expressly agree in the contract to extend the thirty calendar day period under paragraph (d) to a longer period, so long as the extension of time is not grossly unfair to the creditor.

(4) Irrespective of any other law, the period for payment fixed in a contract may not exceed sixty calendar days:

Provided that the parties may expressly agree for a longer period, so long as the extension of time is not grossly unfair to the creditor.

(5) The applicable reference rate for:

- (a) the first semester of the year concerned shall be the rate in force on 1 January of that year;
- (b) the second semester of the year concerned shall be the rate in force on 1 July of that year.

Interest in the case of late payment in transactions between undertakings and public authorities.
Added by:
L.N. 233 of 2005.
Substituted by:
L.N. 272 of 2012;
L.N. 13 of 2014.

26D. (1) In the case of transactions between undertakings as creditor and public authorities as debtor, the creditor shall be entitled, without the need of a reminder, to legal interest for late payment to the extent that it:

- (a) has fulfilled its contractual and legal obligations; and
- (b) has not received the amount due on time, unless the debtor is not responsible for the delay.

(2) The creditor may proceed with the claim for late payment against the debtor without reminding the debtor that the amount is due.

(3) On fulfilment of the conditions under sub-article (1), the creditor shall be entitled to interest for late payment upon the expiry of either of the following time limits:

- (a) thirty calendar days following the date of receipt by the debtor of the invoice;
- (b) thirty calendar days after the date of receipt of the goods or services, when the date of the receipt of the invoice is uncertain;
- (c) thirty calendar days after the date of the receipt of the goods or services, when the debtor receives the invoice earlier than the goods or services;
- (d) thirty calendar days after the date when according to law or in the contract the product has to be ascertained or verified as being in conformity with the contract, and the debtor receives the invoice earlier or on the date on which such acceptance or verification takes place:

Provided that:

- (i) the duration of the procedure relating to acceptance or verification referred to in paragraph (d) shall not exceed thirty calendar days from the date of receipt of the goods or services unless the parties have expressly agreed otherwise in the contract and in all documents relating to the tender document, and provided that it is not grossly unfair to the creditor within the meaning of article 26G;
- (ii) unless expressly agreed to between the creditor and debtor in a contract, the period for payment fixed in the contract may not exceed the limits under paragraph (a) to (d), and when such agreement is reached, provided this is objectively justified in the light of the particular nature of the features of the contract, the period for payment fixed in the contract may not exceed sixty calendar days;
- (iii) the time period mentioned under paragraphs (a) to (d) shall be extended to a maximum of sixty calendar days for:
 - 1. any public authority which carries out economic activities of an industrial or commercial nature by offering goods or services on the market and which is subject as a public undertaking to the transparency requirements laid down in [Commission Directive 2006/111/EC](#);
 - 2. public entities providing health care which are duly recognized for that purpose.

(4) An agreement between the creditor and debtor extending the date of receipt of the invoice is null and void.

(5) The applicable reference rate for:

- (a) the first semester of the year concerned shall be the

rate in force on 1 January of that year;

- (b) the second semester of the year concerned shall be the rate in force on 1 July of that year.

Compensation for recovery costs.

Added by:

L.N. [233 of 2005](#).

Amended by:

L.N. [407 of 2007](#).

Substituted by:

L.N. [272 of 2012](#);

L.N. [13 of 2014](#).

26E. In addition to the claim for late payment under this Sub-Title, a creditor is entitled to recover from the debtor, without the need of a reminder:

- (a) a minimum of forty euro (€40) as compensation for the creditor's own recovery costs; and
- (b) such other reasonable sum in excess of the forty euro (€40) incurred by him due to the debtor's late payment.

Payment schedules.

Added by:

L.N. [272 of 2012](#).

Substituted by:

L.N. [13 of 2014](#).

26F. Nothing in this Sub-Title shall prohibit parties from reaching an agreement on payment being effected periodically by means of instalments:

Provided that where an instalment is not paid within the agreed date, the payment of interest and compensation shall be calculated solely on the basis of overdue amounts.

Provision or practice which is unfair to the creditor.

Added by:

L.N. [272 of 2012](#).

Substituted by:

L.N. [13 of 2014](#).

26G. (1) A provision in an agreement or a practice, which relates to the date or period of payment, the rate of interest for late payment or the compensation for recovery costs, may be unenforceable or may give rise to a claim for damages, if such provision or practice is grossly unfair to the creditor.

(2) In determining whether a provision or a practice is grossly unfair to the creditor, the following shall be taken into consideration:

- (a) any gross deviation from good commercial practice is contrary to good faith or fair dealing;
- (b) the nature of the product or the service; and
- (c) whether the debtor has any objective reason to deviate from the legal rate of interest for late payment, from the payment periods referred to in articles 26C(4) and 26D(3), sub-paragraph (ii) of the proviso to article 26D(3), sub-paragraph (iii) of the proviso to article 26D(3), or from the fixed sum as referred to in article 26E(a).

(3) For the purpose of this article, a provision in a contract or a practice which excludes:

- (a) interest for late payment, shall be deemed as grossly unfair;
- (b) compensation for recovery costs, shall be presumed to be grossly unfair.

(4) An organization which represents enterprises or an organization with a legitimate interest in the representation of enterprises may seek redress before a court of civil jurisdiction against the use of contractual conditions or practices which are manifestly unjust according to sub-articles (1), (2) and (3).

26H. An agreement to a commercial transaction which provides for the retention of title between the vendor and the purchaser, shall entitle the vendor to retain title over the goods until the price has been paid in full by the purchaser.

Retention of title.
Added by:
[L.N. 272 of 2012.](#)
Substituted by:
[L.N. 13 of 2014.](#)

26I. With reference to claims for late payment made according to the provisions of this Sub-title, where the amount of the debt or other features of the proceedings are not in dispute, an executive title may be obtained by the creditor according to the provisions of articles 166A to 170, inclusive, of the [Code of Organization and Civil Procedure](#), without prejudice to the conditions established in the said articles.

Executive title.
Added by:
[L.N. 13 of 2014.](#)

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26J. The Ministry for Finance shall publish the rate of legal interest for late payment in commercial transactions, including publication by the use of electronic means.

Publication.
Added by:
[L.N. 13 of 2014.](#)

Sub-title II

OF PUBLICATION OF MARRIAGE CONTRACTS

27. (1) Every notary receiving a marriage contract or any deed varying such contract between persons any one of whom is described in the deed as a trader, shall, within fifteen days from the date of such contract or deed, file with the Registrar of Courts of Malta or with the Registrar of Courts of Gozo, according to the residence of the party described as a trader, a note containing the following particulars:

Publication of marriage contracts.
Amended by:
[XXXVII.1939.3;](#)
[XXIV.1995.362.](#)

- (a) the date of the contract or deed and the name of the notary receiving such contract or deed;
- (b) the name of the party described as a trader;
- (c) the amount of the dowry and of the dower.

(2) The registrar shall cause a copy of the note aforesaid to be posted up at the Exchange and published in the Government Gazette.

28. (1) The Registrar of Courts of Malta and the Registrar of Courts of Gozo and Comino shall keep an Index, in alphabetical order, of the notes filed with them respectively under the provisions of the last preceding article.

Index of notes to be kept by registrar.
Added by:
[XXXVII.1939.4.](#)
Amended by:
[XXIV.1995.362.](#)

- (2) The Index shall be open to inspection by the public.

Penalty.
 Amended by:
 XXXVII.1939.5;
 L.N. 46 of 1965;
 LVIII.1974.68;
[XIII.1983.5](#);
[VIII.1990.3](#);
[XXIV.1995.362](#).
 Amended by:
 L.N. [407 of 2007](#).

Where spouse
 engages in trade
 after marriage.
 Amended by:
 XXXVII.1939.6.

Duty of registrar in
 case of demand for
 separation of
 property between
 spouses.
 Amended by:
 XXXVII.1939.7.

29. Every notary who fails to comply with the provisions of article 27 shall be liable, on conviction, to a penalty not exceeding twenty-three euro and twenty-nine cents (23.29), at the suit of any interested party, or of the Attorney General, by summons before the Civil Court, First Hall, or before the Court of Magistrates (Gozo) in its superior commercial jurisdiction, as the case may be.

30. (1) Where any one of the spouses engages in trade after the marriage, or although already engaged in trade has not been so described in the marriage contract, the obligations mentioned in article 27 shall devolve upon such spouse.

(2) If such spouse fails to carry out the said obligations, such spouse shall be liable to the penalty prescribed in the last preceding article and may, moreover, in the event of bankruptcy, be adjudged a fraudulent bankrupt.

31. (1) The registrar shall cause every demand for the separation of property between spouses any one of whom is described in the Index mentioned in article 28 as a trader, to be published in the Government Gazette.

(2) The registrar shall likewise cause the judgment on the said demand to be published in the Government Gazette, and shall enter a reference to such judgment in the said Index.

Sub-title III

OF LIMITS OF COMPETITION

Unlawful use of
 names, marks or
 distinctive devices.
 Amended by:
[XVI.2000.103](#).
 Cap. 597.

32. Traders shall not make use of any name, mark or distinctive device capable of creating confusion with any other name, mark or distinctive device lawfully used by others, even though such other name, mark or distinctive device be not registered in terms of the [Trademarks Act](#), nor may they make use of any firm name or fictitious name capable of misleading others as to the real importance of the firm.

Permitted
 comparative
 advertising.
 Added by:
[II.2008.58](#).

32A. (1) Traders shall not engage in any comparative advertising.

(2) Notwithstanding the preceding sub-article, comparative advertising shall, as far as the comparison is concerned, be permitted when the following conditions are met:

- (a) it is not misleading within the meaning of article 32B or within the meaning of articles 51C and 51D of the [Consumer Affairs Act](#);
- (b) it compares goods or services meeting the same needs or intended for the same purpose;
- (c) it objectively compares one or more material, relevant, verifiable and representative features of those goods

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and services, which may include price;

- (d) it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities, or circumstances of a competitor;
- (e) for products with designation of origin, it relates in each case to products with the same designation;
- (f) it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;
- (g) it does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name;
- (h) it does not create confusion among traders, between the advertiser and a competitor or between the advertiser's trade marks, trade names, other distinguishing marks, goods or services and those of a competitor.

(3) Any comparison referring to a special offer shall indicate in a clear and unequivocal way the date on which the offer ends or, where appropriate, that the special offer is subject to the availability of the goods and services, and where the special offer has not yet begun the date of the period during which the special offer shall apply. "Special offer" in this sub-article refers to the price of the goods or services or any other specific condition under which the goods or services will be supplied.

(4) For the purposes of this article "comparative advertising" means any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor.

32B. (1) Traders shall not engage in any form of misleading advertising.

Misleading
advertising.
Added by:
[II.2008.58.](#)

(2) An advertisement is misleading if in any way, including its presentation, it deceives or is likely to deceive the persons to whom it is addressed or whom it reaches, and if by reason of its deceptive nature, it is likely to affect their economic behaviour or is one which for those reasons, injures or is likely to injure a competitor of the person whose interests the advertisement seeks to promote.

(3) In determining whether an advertisement is misleading account shall be taken of all its features, and in particular of any information it may have about -

- (a) the characteristics of goods or services, including their availability, nature, execution, composition, method and date of manufacture or provision, fitness for purpose, uses, quantity, specification, geographical or commercial origin or the results to be expected from their use, or the results and material features of tests or checks carried out on the goods or services;
- (b) the price or the manner in which the price is

calculated, and the conditions on which the goods are supplied or the services provided;

- (c) the nature, attributes and rights of the advertiser, including his identity and assets, his qualifications and ownership of industrial, commercial or intellectual property rights or any awards and distinctions made to him.

False indication of origin of goods.

33. Traders shall not make use of any false indication of origin of the goods:

Provided that a designation which according to commercial usage is considered as a common designation, shall not be deemed to be a false indication.

Spreading of news prejudicial to other traders.

34. (1) Traders shall not, for the purpose of competition, spread news capable of prejudicing the business or trade carried on by other persons.

(2) Moreover, they shall not make use of honours, patents, medals, prizes or other distinctions to which they have no claim or which have been obtained for some other branch of business or trade.

Subornation of other traders' employees.

35. Traders shall not suborn persons employed in the trade or business carried on by a competitor for the object of knowing or exploiting his customers.

Certificates of honesty or competency contrary to facts.

36. A trader shall not, in the exercise of his trade or business, issue certificates of honesty or competency contrary to the facts as known to him and capable of imposing upon the good faith of others.

Interpretation.
Added by:
[II.2008.59](#).

36A. For the purposes of this subtitle, "advertising" means any form of representation, including a catalogue, a circular and a price list, about a trade, business, craft or profession in order to promote the supply or transfer of goods or services, immovable property, rights or obligations and "advertisement" shall be construed accordingly.

Penalties.
Amended by:
[XIII.1983.5](#);
[VIII.1990.3](#);
[XXIV.1995.362](#);
[L.N. 407 of 2007](#);
[II.2008.60](#).

37. (1) Any trader who contravenes any of the prohibitions contained in articles 32 to 36 inclusively, shall, at the choice of the injured trader, be liable either to an action for damages and interest or to a penalty. The injured trader may, further, demand that every thing done contrary to the said prohibitions be destroyed, or that any other remedy be applied capable, according to circumstances, of removing the act constituting the unlawful competition.

(2) Any action for damages and interest brought under this article shall be governed by the rules of the civil law.

(3) The penalty, however, shall be fixed by the Civil Court, First Hall, or by the Court of Magistrates (Gozo) in its superior commercial jurisdiction at the suit of the injured trader, and shall not be less than four hundred and sixty-five euro and eighty-seven cents (€465.87) nor more than four thousand, six hundred and fifty-eight euro and seventy-five cents (€4,658.75), having regard to the seriousness of the fact, to its continuance, to the malice of the

offending party and to all other particular circumstances of each case. Such penalty shall be paid to the injured trader in settlement of all his claims for damages and interest.

Title III OF THE REGISTER OF TRADERS

*Provisions of this
Title substituted by
Act XXX of 1927.*

38. (1) Every trader and every commercial partnership may, if they so desire, be registered in a special book to be called "Register of Traders" which shall be kept under the authority of the Civil Court, First Hall.

Register of traders.
Amended by:
[VIII.1990.3](#);
[XXIV.1995.362](#).

(2) There shall be kept under the authority of the Court of Magistrates (Gozo) in its superior commercial jurisdiction another register for traders residing in Gozo and for commercial partnerships having their place of business there; such register, however, shall be deemed to form an integral part of that kept under the authority of the Civil Court, First Hall.

39. (1) Every person is entitled to be registered in the register mentioned in the last preceding article, provided -

Qualifications for
registration.
Amended by:
[XIII.2008.2](#).

- (a) he is actually engaged in trade or in any branch of trade;
- (b) he is discharged, if he had previously been adjudged bankrupt;
- (c) he has not been convicted of any of the crimes affecting public trust or against property provided for in the [Criminal Code](#);
- (d) he produces a certificate from the Council of the Chamber of Commerce, Enterprise and Industry as to the existence in his respect of the conditions mentioned in paragraphs (a), (b) and (c).

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(2) Where a commercial partnership is to be registered, the conditions mentioned in paragraphs (b), (c) and (d) of sub-article (1) of this article must exist in respect of every one of the partners with unlimited liability.

40. Any person desiring to be registered in the aforesaid register shall make an application before one of the courts mentioned in article 38, as the case may be, producing all the requisite documents, and, in the case of a commercial partnership, a copy of the statement published in the Government Gazette in terms of sub-article (1) of article 192 of the [Commercial Partnerships Ordinance](#)*, showing the date of registration of the partnership and the date on which the relative certificate of

Procedure for
registration.
Amended by:
[XVI.1982.2](#).

Cap. 168.

*Repealed by Act XXV of 1995 ([Chapter 386](#)).

registration was issued.

Grant or refusal of
application for
registration.
Amended by:
[XXII.2005](#).79.

41. (1) The judge or magistrate, as the case may be, shall grant or refuse the application by a decree *in camera*, ordering in the first case, the registrar to enter applicant's name in the register and, in the second case, that the applicant be served with a copy of the decree.

(2) The decree refusing the application shall contain the reasons for such refusal and shall be subject to appeal, by sworn application, to the Court of Appeal within eight days from the day of the service above-mentioned.

Powers of court.

42. It shall be lawful for the court of first or second instance to examine the applicant on oath and to require him to produce all such evidence as it shall deem necessary for dealing with the application.

Cancellation from
register.
Amended by:
[XIII.2008](#).2.

43. (1) The name of a trader or of a commercial partnership, after having been duly entered in the register above-mentioned, shall be liable to cancellation if the trader dies or retires from business or if the partnership is dissolved, or if the one or the other is adjudged bankrupt, or if the trader or any of the partners with unlimited liability is convicted of any of the crimes mentioned in paragraph (c) of sub-article (1) of article 39.

(2) The demand for the cancellation shall be made before the competent court, by means of an application, by any interested party or by the President of the Council of the Chamber of Commerce, Enterprise and Industry, against the person or partnership concerned or his or its lawful representative.

(3) The decree given on such application is also subject to appeal within the same time and in the same manner as prescribed in sub-article (2) of article 41.

Contents of
register of traders.
Amended by:
[XXIV.1995](#).362;
[XXXI.2002](#).256.

44. (1) Every entry in the register above-mentioned shall bear a progressive number, and shall set out the name and surname of the trader or of every partner with unlimited liability, as the case may be, the trade name, the firm or partnership name under which the trade is carried on, the place of residence and the trade or the particular branch of trade carried on.

(2) Every registration in Gozo shall, without delay, be communicated, by means of a legal copy, to the registrar in Malta who shall enter such registration in the register of traders, allotting to it a progressive number. Such number shall, without delay, be communicated to the registrar in Gozo who shall forthwith enter the same in the register kept under the authority of that court.

Certificate of
registration.

45. It shall be lawful for any trader or commercial partnership, at his or its own expense, to demand from the registrar a certificate of his or its registration.

Register open to
inspection.

46. The register of traders shall be open to inspection by every person, free of charge.

47. (1) Default of registration shall not operate so as to restrain any person from engaging in trade.

Default of registration not to debar person from engaging in trade.
Amended by:
L.N. 46 of 1965;
LVIII.1974.68;
[XIII.1983.5;](#)
[XXIV.1995.360;](#)
[XXII.2005.79;](#)
L.N. 407 of 2007.

(2) Nevertheless, whosoever, without being duly registered or after his name has been struck off the register of traders, shall, in his correspondence or in any other paper relating to his business, make use of any designation calculated to lead others to believe that he is duly registered, shall be liable to a penalty of not less than eleven euro and sixty-five cents (11.65) and not exceeding two hundred and thirty-two euro and ninety-four cents (232.94), at the suit of the Attorney General, by sworn application before the competent court of commercial jurisdiction.

Penalty for unlawful use of term implying registration.

48. In the register of traders there shall be a special part for public brokers and another for commercial agents.

Parts of register for public brokers and commercial agents.

Title IV

OF PERSONS AUXILIARY TO TRADERS

Sub-title I

OF AGENCY IN GENERAL

Provisions of this Title substituted by Act XXX of 1927.

49. In the absence of any agreement, law or custom to the contrary, mercantile agency is governed by the provisions contained in Title XVIII of Part II of Book Second of the [Civil Code](#) so far as applicable, with the exception of article 1861:

Law governing mercantile agency.
Amended by:
[XLIX.1981.6.](#)
Cap.16.

Provided that where a mercantile agency involves also the obligation on the part of the agent of performing particular services, then it shall also be governed by the provisions of the [Employment and Industrial Relations Act](#), so far as applicable.

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50. All acts done by the agent on behalf of the principal, within the scope of his authority, produce directly their effect whether in favour of or against the principal.

Effects of acts done by agent within scope of his authority.

51. For the purpose of establishing the validity and the effects of the act done by the agent, regard shall be had to the capacity of the principal and to the intention of the agent:

Rules regarding the validity and effects of acts done by agent.

Provided that where at the time of the conclusion of the transaction the principal is in bad faith, he cannot set up the good faith of the agent.

52. Where the law requires that an act be expressed in writing, the authority given to an agent to do such act must be conferred in writing.

Form of agent's authority.

53. Saving any custom or agreement to the contrary, the power

Agent's powers.

to buy shall not be deemed to include the power to buy on credit, and the power to sell shall not be deemed to include the power to sell on credit.

Duty of agent towards third parties.

54. (1) The agent is bound to furnish to the third party every information as to the extent of the authority conferred on him by the principal and, if the third party so requires, the agent is bound to deliver to such third party a declaration duly signed by him to the effect that a given transaction is comprised within the said authority.

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(2) Any false statement wilfully made by the agent in the said declaration shall be considered as a forgery of a commercial document within the meaning of article 183 of the [Criminal Code](#), and shall be liable to the punishment therein prescribed, without prejudice to any action for damages and interest.

How principal withdrawing agency, may free himself from liability towards third parties.
Amended by:
[VIII.1990.3](#);
[XXIV.1995.362](#).

55. Where the agency has been conferred in general terms, the principal who withdraws the agency, may relieve himself from all liability towards third parties for any further acts done by the agent, by giving notice of such withdrawal by means of a note filed in the Civil Court, First Hall, or in the Court of Magistrates (Gozo) in its superior commercial jurisdiction, as the case may be, and causing such note to be published in the Government Gazette and in another newspaper, and affixed in the Exchange.

Transaction of business by agent with himself.

56. It shall not be lawful for the agent to transact with himself a business of his principal, whether on his own behalf or on behalf of any other person, directly or through the medium of a third party, without the authority or ratification of the principal.

Sub-title II

OF MANAGERS

Definition of manager.

57. A manager is a person who is placed, personally and permanently, in charge of the business or of a branch of the business of the principal in one or more fixed places.

Who may be manager. *Amended by:*
[XLVI.1973.108](#).

58. Any person, whatever his or her age, may be a manager.

Manager's authority may be express or implied.

59. (1) The authority to act as manager may be express or implied.

(2) In the first case, where the principal desires to limit the authority conferred on the manager in such a way as to raise a presumption that the limitations imposed are known to third parties, he must file in the one or the other of the courts mentioned in article 55 a note showing in detail all such limitations, and cause

such note to be affixed in the Exchange and published in the Government Gazette and in another newspaper, possibly a commercial newspaper.

(3) In the second case, the authority to act as manager shall in regard to third parties be deemed to be general and to comprise all matters pertaining and necessary to the exercise of the business or branch of business in respect of which it has been conferred, unless the principal proves that such third parties knew of the aforesaid limitations at the time the transaction was concluded.

60. The principal shall be liable for the acts of the manager and for the obligations contracted by him within the limits of the business or branch of business which has been entrusted to him.

Liability of principal.

61. A loan (*mutuum*) made to the manager is not binding on the principal except when the object for which it has been made has been stated, and such object actually relates to the business or branch of business in charge of which the manager has been placed.

Loan made to manager.

62. (1) The manager shall always deal in the name of the principal, and when signing shall, besides his own name and surname, indicate the name and surname or the firm name of the principal, with the clause *per procura* or some equivalent clause.

Duties of manager.

(2) In default of such indication, the manager shall be personally liable; but in such case, third parties may bring, also against the principal, any action arising from the acts of the manager pertaining and necessary to the exercise of the business with which he is charged.

63. (1) The manager shall not, either on his own behalf or on behalf of others, without the express consent of the principal, carry on or have any interest in any business of the same nature as that in charge of which he has been placed.

Manager may not transact business on his own or other party's behalf.

(2) If the manager acts in contravention of this prohibition, the principal may, at his option, either take action for damages and interest or demand payment of any profits made by the manager in any transaction entered into in violation of his duty.

64. The manager may sue or be sued in the name of the principal for any obligations arising out of the acts done by him in the exercise of the business or branch of business with which he is charged, even if the principal is present in Malta.

Manager may sue or be sued.

65. The manager is jointly and severally liable with the principal for the observance of the provisions contained in Title II of this Part of this Code in regard to all matters relating to the business or branch of business with which he is charged.

Liability of manager.
*Amended by:
XVI.1982.2.*

66. The determination of the manager's authority shall be made public with the same formalities prescribed in sub-article (2) of article 59, even where the grant of the authority had not been so made known.

Determination of manager's authority.

OF COMMERCIAL TRAVELLERS AND SALESMEN

Duties of
commercial
travellers.

67. (1) Commercial travellers shall produce to the customers with whom they deal in the name of the principal, the instrument creating their authority and defining its limitations.

(2) In the absence of an express authority, they cannot receive the price of goods, unless they personally deliver the same, nor can they grant time for payment or allow discount in respect of transactions concluded by them.

(3) They may receive complaints addressed to the principal, and may sue or be sued in the name of the principal in respect of obligations arising out of transactions concluded by them in the name of the principal himself.

Duties of
salesmen.

68. (1) Salesmen entrusted with wholesale or retail sales, are empowered to receive within the warehouse or place of business, the price of goods sold by them, unless the receipt of payments is entrusted to some other person as cashier.

(2) They cannot receive such price outside the warehouse or place of business, unless they produce the power giving them authority so to do or deliver a receipt signed by the principal.

Commercial
travellers and
salesmen may not
exercise same trade
as principal.
Amended by:
[*XIII.1983.5;*](#)
[*VIII.1990.3;*](#)
[*L.N. 407 of 2007.*](#)

69. (1) Commercial travellers and salesmen shall not, without express authority, exercise the same trade as the principal, either on their own behalf or on behalf of others, and shall not communicate information about customers to the detriment of the principal.

(2) Whosoever acts in contravention of this prohibition shall be liable for damages and interest; and shall moreover be liable to a penalty of not less than eleven euro and sixty-five cents (11.65) and not exceeding two hundred and thirty-two euro and ninety-four cents (232.94), on proceedings taken at the suit of the principal, before the Court of Magistrates.

Sub-title IV

OF COMMERCIAL AGENTS

Application of this
Part.
Substituted by:
[*IX.2003.3.*](#)

70. (1) The relations between commercial agents and their principals and the activities of commercial agents in Malta are governed by the provisions of this sub-title.

(2) This sub-title shall not apply to:

- (a) commercial agents whose activities are unpaid;
- (b) commercial agents when they operate on commodity exchanges or in the commodity market; and
- (c) persons whose activities as commercial agents are secondary.

(3) The provisions of Part I of the Schedule shall apply in order to determine the persons whose activities as commercial agents are to be deemed secondary for the purposes of sub-article

(2)(c).

70A. In this sub-title:

"commercial agent" means a person not being a person in the employment of the principal, who has continuing authority to negotiate the sale or purchase of goods or services on behalf of another person (the principal), or to negotiate and conclude such transactions on behalf and in the name of that principal, but does not include:

- (i) a person who in his capacity as an officer of a company or association is empowered to enter into commitments binding the company or association;
- (ii) a partner who is lawfully authorised to enter into commitments binding on his partners;
- (iii) a person acting as an insolvency practitioner in Malta or in an equivalent position in any other jurisdiction;

"commission" means any part of the remuneration of a commercial agent which varies with the number or value of business transactions;

"Minister" means the Minister responsible for commerce;

"regulatory authority" means the Council of the Chamber of Commerce, Enterprise and Industry;

"restraint of trade clause" means an agreement or a clause in an agreement restricting the business activities of a commercial agent following the termination of the agency contract.

71. (1) Any person desiring to act as a commercial agent, whether alone or in partnership with any other person, shall notify the regulatory authority requesting registration, within thirty days of undertaking this activity.

(2) In order to be registered as a commercial agent with the regulatory authority an applicant shall apply in writing to the authority in such form as the regulatory authority shall prescribe, containing the full name and surname, age, private and business addresses of the applicant and such other particulars concerning his business or occupation as the regulatory authority shall require. In the case of a person applying to be registered as a commercial agent in partnership, a reference shall be made in the application to the statement published in the Gazette in terms of the [Companies Act](#) showing the date of registration of the partnership and the date on which the relative certificate of registration was issued.

(3) The regulatory authority shall not accept an application for registration to act as a commercial agent from any person who is in the employment of the Government of Malta or of any financial institution, or from any person holding a warrant to practise a profession in Malta and actually practising such profession, or from stockbrokers or from any person who, whether in Malta or abroad, has been found guilty of fraudulent bankruptcy.

Definition of commercial agent, etc.

Added by:
[IX.2003.3.](#)
Amended by:
[XIII.2008.2.](#)

Commercial agents.
Amended by:
[XXXVII.1939.8;](#)
[L.N. 46 of 1965;](#)
[IX.1982.2.](#)
Substituted by:
[IX.2003.3;](#)
[XXIII.2009.18.](#)

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(4) Notice of any registration under this article shall be published in the Gazette. In the month of January of each year, a complete list of registrations then in force shall likewise be published in the Gazette.

(5) Any registration carried out under this article may be withdrawn or suspended by the regulatory authority, if the person registered -

- (a) is convicted of any crime against property;
- (b) is adjudged bankrupt;
- (c) accepts employment under the Government of Malta, or with any financial institution, or becomes the holder of a warrant to practise a profession and actually practises such profession or becomes a stockbroker;
- (d) is proved, to the satisfaction of the court, not to be a fit and proper person to act as a commercial agent.

(6) Such withdrawal or suspension shall be published in the Gazette.

Power of the Minister to prescribe fee for registration.

Amended by:
XXXVII.1939.9.;
L.N. 46 of 1965;
LVIII.1974.68.
Substituted by:
[IX.2003.3;](#)
[XXIII.2009.18.](#)

72. The Minister after consulting the regulatory authority may, by regulation, prescribe the fee to be charged by the regulatory authority in respect of a registration to act as a commercial agent under the provisions of the last preceding article. Any such regulation may prescribe the payment of an annual fee in addition to the fee payable on the initial registration and may provide that in default of payment of any such annual fee, the registered person or partnership shall removed from the register.

Penalties.
Amended by:
XXXVII.1939.10;
VII.1941.2.
Substituted by:
[IX.2003.3.](#)
Amended by:
L.N. 407 of 2007.
Substituted by:
[XXIII.2009.18.](#)

73. Without prejudice to the provisions of article 71(1), any person who, without being registered, represents himself to be, or acts or undertakes to act as a commercial agent, shall be liable:

- (a) on a first conviction to a fine (*multa*) not exceeding two thousand and five hundred euro (€2,500); and
- (b) on a second or subsequent conviction, to imprisonment for a term not exceeding three months or to a fine (*multa*) not exceeding five thousand euro (€5,000).

No grant or renewal of registration pending settlement of fine.

Added by:
[IX.2003.3.](#)
Substituted by:
[XXIII.2009.18.](#)

73A. Where any court has imposed a fine under this sub-title, and such fine has not been paid, the regulatory authority shall not grant or renew the registration on the expiry thereof until such time as the payment of the fine is effected.

Duties of commercial agent to his principal.
Substituted by:
[IX.2003.3.](#)

74. (1) In performing his activities a commercial agent shall look after the interests of his principal and act dutifully and in good faith.

(2) In particular, a commercial agent shall -

- (a) make proper efforts to negotiate and, where appropriate, conclude the transactions he is instructed to take care of;

- (b) communicate to his principal all the necessary information available to him;
- (c) comply with reasonable instructions given by his principal.

75. (1) In his relations with his commercial agent a principal shall act dutifully and in good faith.

Duties of a principal to his commercial agent.
Substituted by:
[IX.2003.3.](#)

(2) In particular, a principal shall -

- (a) provide his commercial agent with the necessary documentation relating to the goods concerned;
- (b) obtain for his commercial agent the information necessary for the performance of the agency contract, and in particular notify his commercial agent within a reasonable period where he anticipates that the volume of commercial transactions will be significantly lower than that which the commercial agent could normally have expected.

(3) A principal shall, in addition, inform his commercial agent within a reasonable period of his acceptance or refusal of, and of any non-execution by him of, a commercial transaction which the commercial agent has procured for him.

76. (1) The parties may not derogate from articles 74 and 75.

Prohibition on derogation from articles 74 and 75 and consequence of breach.
Substituted by:
[IX.2003.3.](#)

(2) The law applicable to the contract shall govern the consequence of breach of the rights and obligations under articles 74 and 75 above.

77. (1) Without prejudice to the application of any enactment or rule of law concerning the level of remuneration of commercial agents, in the absence of any agreement as to remuneration between the parties, a commercial agent shall be entitled to the remuneration that commercial agents appointed for the goods forming the subject of his agency contract are customarily allowed in the place where he carries on his activities and, in the absence of such customary practice, a commercial agent shall be entitled to such reasonable remuneration taking into account all the aspects of the transaction to be agreed to between the parties or in default by the court.

Form and amount of remuneration in absence of agreement.
Substituted by:
[IX.2003.3.](#)

(2) Where the remuneration of a commission agent is not fixed in whole or in part as a commission the provisions of articles 77A to 77F shall not apply.

77A. (1) A commercial agent shall be entitled to commission on commercial transactions concluded during the period covered by the agency contract -

Entitlement to commission on transactions concluded during agency contract.
Added by:
[IX.2003.3.](#)

- (a) where the transaction has been concluded as a result of his direct or indirect intervention; or
- (b) where the transaction is concluded with a third party whom he has previously acquired as a customer for transactions of the same kind.

(2) A commercial agent shall also be entitled to commission on transactions concluded during the period covered by the agency contract where he has an exclusive right to a specific geographical area or to a specific group of customers and where the transaction has been entered into with a customer in that area or group.

Entitlement to commission on transactions concluded after agency contract has terminated.
Added by:
[IX.2003.3.](#)

77B. Subject to article 77C, a commercial agent shall be entitled to commission on commercial transactions concluded after the agency contract has terminated if -

- (a) the transaction is mainly attributable to his efforts during the period covered by the agency contract and if the transaction was entered into within a reasonable period after that contract terminated; or
- (b) in accordance with the conditions mentioned in article 77A above, the order of the third party reached the principal or the commercial agent before the agency contract terminated.

Apportionment of commission between new and previous commercial agents.
Added by:
[IX.2003.3.](#)

77C. (1) A commercial agent shall not be entitled to the commission referred to in article 77A if that commission is payable, by virtue of article 77B, to the previous commercial agent, unless it is equitable because of the circumstances for the commission to be shared between the commercial agents.

(2) The principal shall be liable for any sum due under sub-article (1) to the person entitled to it in accordance therewith, and any sum which the other commercial agent receives to which he is not entitled shall be refunded to the principal.

When commission due and date for payment.
Added by:
[IX.2003.3.](#)

77D. (1) Commission shall become due as soon as, and to the extent that, one of the following circumstances occurs:

- (a) the principal has executed the transaction; or
- (b) the principal should, according to his agreement with the third party, have executed the transaction; or
- (c) the third party has executed the transaction.

(2) Commission shall become due at the latest when the third party has executed his part of the transaction or should have done so if the principal had executed his part of the transaction, as he should have.

(3) The commission shall be paid not later than on the last day of the month following the quarter in which it became due, and, for the purposes of this sub-title, unless otherwise agreed between the parties, the first quarter period shall run from the date the agency contract takes effect, and subsequent periods shall run from that date in the third month thereafter.

(4) Any agreement to derogate from sub-articles (2) and (3) to the detriment of the commercial agent shall be void.

Extinction of right to commission.
Added by:
[IX.2003.3.](#)

77E. (1) The right to commission can be extinguished only if and to the extent that it is established that the contract between the third party and the principal will not be executed for a reason not attributable to the fault of the principal.

(2) Any commission which the commercial agent has already received shall be refunded if the right to it is extinguished.

(3) Any agreement to derogate from the provisions of sub-article (1) to the detriment of the commercial agent shall be void.

77F. (1) The principal shall supply his commercial agent with a statement of the commission due, not later than the last day of the month following the quarter in which the commission has become due, and such statement shall set out the basis used in calculating the amount of the commission.

Periodic supply of information as to commission due and right of inspection of principal's books.
Added by:
[IX.2003.3.](#)

(2) A commercial agent shall be entitled to demand that he be provided with all the information (and in particular an extract from the books) which is available to his principal and which he requires in order to check the amount of the commission due to him.

(3) Any agreement to derogate from sub-articles (1) and (2) shall be void.

(4) Nothing in this article shall remove or restrict the effect of, derogate from the provisions of any enactment or rule of law which grants to an agent the right to inspect the books of a principal.

78. (1) The commercial agent and principal shall each be entitled to receive from the other, on request, a signed written document setting out the terms of the agency contract including any terms subsequently agreed.

Right to signed written statement of terms of agency contract.
Substituted by:
[IX.2003.3.](#)

(2) Any purported waiver of the right referred to in paragraph (1) above shall be void.

78A. An agency contract for a fixed period which continues to be performed by both parties after that period has expired shall be deemed to be converted into an agency contract for an indefinite period.

Conversion of agency contract after expiry of fixed period.
Added by:
[IX.2003.3.](#)

78B. (1) Where an agency contract is concluded for an indefinite period either party may terminate it by notice.

Minimum periods of notice for termination of agency contract.
Added by:
[IX.2003.3.](#)

(2) The period of notice shall be -

- (a) one month for in first year of the contract;
- (b) two months after the commencement of the second year but before the commencement of the third year;
- (c) three months after the commencement of the third year;

and the parties may not agree on any shorter periods of notice.

(3) The parties may agree on longer periods than those laid down in sub-article (2), provided that the period of notice to be given by the principal may not be shorter than that to be given by the commercial agent.

(4) Unless otherwise agreed by the parties, the end of the period of notice must coincide with the end of a calendar month.

(5) The provisions of this article shall also apply to an agency

contract for a fixed period which in virtue of article 78A is converted into an agency contract for an indefinite period and for the purposes of calculating the period of notice the term of the fixed period contract shall be deemed to be part of the agency contract for an indefinite period.

Savings with regard to immediate termination.
Added by:
[IX.2003.3.](#)

78C. This sub-title shall not affect the application of any enactment or rule of law which provides for the immediate termination of the agency contract -

- (a) because of the failure of one party to carry out all or part of his obligations under that contract; or
- (b) where exceptional circumstances arise.

Entitlement of commercial agent to indemnity or compensation on termination of agency contract.
Added by:
[IX.2003.3.](#)

78D. (1) Subject to sub-article (7) and to article 78E, the commercial agent shall be entitled to an indemnity if and to the extent that -

- (a) he has brought the principal new customers or has significantly increased the volume of business with existing customers and the principal continues to derive substantial benefits from the business with such customers; and
- (b) the payment of this indemnity is equitable having regard to all the circumstances and, in particular, the commission lost by the commercial agent on the business transacted with such customers.

(2) The amount of the indemnity shall not exceed a figure equivalent to indemnity for one year calculated from the commercial agent's average annual remuneration over the preceding five years and if the contract goes back less than five years the indemnity shall be calculated on the average for the period in question.

(3) The grant of an indemnity as mentioned above shall not prevent the commercial agent from seeking damages.

(4) Subject to sub-article (7) and to article 78E, the commercial agent shall be entitled to compensation for damage he suffers as a result of the termination of his relations with his principal.

(5) For the purpose of this sub-title such damage shall be deemed to occur particularly when the termination takes place in either or both of the following circumstances, namely circumstances which -

- (a) deprive the commercial agent of the commission which proper performance of the agency contract would have procured for him whilst providing his principal with substantial benefits linked to the activities of the commercial agent; or
- (b) have not enable the commercial agent to amortize the costs and expenses that he had incurred on the advice of his principal in the performance of the agency contract.

(6) Entitlement to the indemnity or compensation for damage

as provided for under sub-articles (1) to (5) shall also arise where the agency contract is terminated as a result of the death of the commercial agent.

(7) The commercial agent shall lose his entitlement to the indemnity or compensation for damage in accordance with the provisions of the foregoing sub-articles if within one year following termination of his agency contract he does not make a claim to his principal therefor.

78E. The indemnity or compensation referred to in article 78D shall not be payable to the commercial agent where -

- (a) the principal has terminated the agency contract because of default attributable to the commercial agent which would justify immediate termination of the agency contract in accordance with article 78C; or
- (b) the commercial agent has himself terminated the agency contract, unless such termination is justified -
 - (i) by circumstances attributable to fault of the principal, or
 - (ii) on grounds of the age, infirmity or illness of the commercial agent in consequence of which he cannot reasonably be required to continue his activities; or
- (c) the commercial agent, with the agreement of his principal, assigns his rights and duties under the agency contract to another person.

Grounds for excluding payment of indemnity or compensation under article 78D.
Added by:
[IX.2003.3.](#)

78F. The parties may before the expiration of the agency contract, not derogate from articles 78D and 78E to the detriment of the commercial agent.

Prohibition on derogation from articles 78D and 78E.
Added by:
[IX.2003.3.](#)

78G. (1) A restraint of trade clause shall be valid only if and to the extent that -

- (a) it is concluded in writing; and
- (b) it relates to the geographical area or the group of customers and the geographical area entrusted to the commercial agent and to the kind of goods covered by his agency under the contract.

Restraint of trade clauses.
Added by:
[IX.2003.3.](#)

(2) A restraint of trade clause shall be valid for not more than two years after termination of the agency contract.

(3) Nothing in this article shall affect any enactment or rule of law which imposes other restrictions on the validity or enforceability of restraint of trade clauses or which enables a court to reduce the obligations on the parties resulting from such clauses.

78H. Nothing in this sub-title shall require information to be given where such disclosure would be contrary to public policy.

Disclosure of information.
Added by:
[IX.2003.3.](#)

Service of notice,
etc.
Added by:
[IX.2003.3.](#)

78I. (1) Any notice, statement or other document to be given or supplied to a commercial agent or to be given or supplied to the principal under this sub-title may be so given or supplied:

- (a) by delivering it to him;
- (b) by leaving it at his proper address addressed to him by name;
- (c) by sending it by post to him addressed either to his registered address or to the address of his registered or principal office; or by any other means provided for in the agency contract.

(2) Any such notice, statement or document may -

- (a) in the case of a body corporate, be given or served on the secretary or clerk of that body;
- (b) in the case of a partnership, be given to or served on any partner or on any person having the control or management of the partnership business.

Contracts entered
into before coming
into force of this
subtitle.
Added by:
[IX.2003.3.](#)

78J. The provisions of this subtitle shall also apply to agency contracts concluded before the date of coming into force of this sub-title:

Provided that nothing therein shall effect any right or liability accrued before such date.

Sub-title V

OF BROKERS

Requirements for
becoming a public
broker.
Amended by:
[XXIV.1995.362](#);
[XIII.2008.2, 3.](#)
Substituted by:
[XXIII.2009.19.](#)

79. (1) Any person desiring to act as a public broker shall notify the Council of the Chamber of Commerce, Enterprise and Industry, as the authority regulating this activity, requesting registration, within thirty days of starting such an activity.

(2) In order to be registered as a public broker with the regulatory authority, an applicant shall inform the authority in writing in such form as the regulatory authority shall prescribe, containing the full name and surname, age, private and business addresses of the applicant and such other particulars concerning his business or occupation as the regulatory authority shall require.

(3) Brokers complying with all the aforesaid formalities shall be registered in a register administered by the regulatory authority. Notice of any registration under this article shall be published in the Gazette. In the month of January of each year, a complete list of registrations then in force shall likewise be published in the Gazette.

Forfeiture of office
of broker.
Substituted by:
[XXIII.2009.19.](#)
Cap. 9.

80. If a public broker is convicted of any of the crimes provided for in Sub-titles I, II and III of Title IX of Part II of Book First of the [Criminal Code](#), he shall, *ipso facto*, forfeit his office,

and his name shall be struck off the register.

81. Whosoever, without complying with the formalities prescribed in article 79 or after forfeiting his office of public broker, performs an act of brokerage, shall, on conviction by the Court of Magistrates, be liable to the punishments established for contraventions.

Punishment for unlawful exercise of office of broker.
Amended by:
[VIII.1990.3.](#)

82. (1) Public brokers shall keep a memorandum or daybook and a book of brokerages.

Books to be kept by brokers.

(2) The provisions of article 21 shall apply to such books.

83. Every public broker, on the conclusion of every transaction, shall forthwith note it down in his memorandum or day-book, and shall, day by day, enter every transaction in his book of brokerages. He shall state in both such books, the date, the name of the contracting parties, the nature of the transaction and, generally, every stipulation and condition agreed upon by the parties, and, in the case of merchandise, he shall particularly state the quality, the quantity, the price and the marks, if any, and the mode of payment.

Duties of brokers.

84. The public broker shall, if so required by any of the contracting parties, deliver a true copy signed by him, of the entry made in the book of brokerages.

Delivery of copies of entries.

85. Public brokers shall, if so ordered by the court, produce their books for the purpose of collating any copies delivered by them to the parties, and shall give to the court, if necessary on oath, all such explanations as may be required.

Production of books.

86. (1) Every public broker shall have the custody of his books and shall keep them in good order.

Custody of books.
Amended by:
[XXIV.1995.362.](#)

(2) In the event of the death or interdiction of a public broker, his books shall be deposited in the Civil Court, First Hall, by his heirs or by any other person in whose possession they may be or by himself, as the case may be, within fifteen days from the death or interdiction.

(3) In default of such deposit, the registrar may take action for the deposit of the books and may, where necessary, demand for such purpose the issue of any requisite warrant against any person whom he shall have reasonable grounds to believe to be in possession of such books.

87. The provisions contained in articles 79, 80 and 81 shall not apply to brokers employed in the selling or letting of immovables, and the provisions contained in articles 79 to 86 shall not apply to brokers employed in the selling of agricultural produce.

Exceptions.
Amended by:
[XXXVII.1939.11.](#)

88. No public broker shall transact any commercial business for his own account, or have any interest therein, either directly or indirectly, in his own name or through the medium of a third party, whether alone or in partnership with others; nor shall any public broker lend his name for any transaction whatsoever to any person not authorized to exercise the office of a public broker:

Broker cannot transact business for his own account, etc.

Provided that two or more public brokers may form a

partnership between them for the purpose of brokerage only.

Broker is not agent of parties.

89. A public broker is not the agent of the parties in concluding any transaction; and if in concluding any transaction he acts as agent of one of the parties, he shall not be entitled to the commission as broker.

Non-disclosure of name of party by broker.

90. (1) A public broker who does not disclose to one contracting party the name of the other contracting party shall be personally liable for the performance of the contract, and shall be subrogated to the rights of the contracting party who has been paid by him, as against the undisclosed contracting party.

(2) If the public broker discloses the name even after concluding the business, the one party may directly sue the other party, saving the public broker's liability in case of non-performance.

Penalty for contraventions committed by public brokers.
Amended by:
L.N. 46 of 1965;
LVIII.1974.68;
XIII.1983.5;
VIII.1990.3;
XXIV.1995.362;
L.N. 407 of 2007.
Substituted by:
XXIII.2009.20.

91. (1) A public broker who acts in contravention of any of the obligations mentioned in the foregoing articles shall, at the instance of any interested party or of the Attorney General, be liable to a penalty of not less than fifty euro (€50) and not exceeding five hundred euro (€500) on proceedings taken before the Civil Court, First Hall, or the Court of Magistrates (Gozo) in its superior commercial jurisdiction, as the case may be, saving any other action arising from this Code or any other law.

(2) The court may, moreover, order the interdiction of the public broker for a period not exceeding two years, in which case the provisions of article 81 shall, during the time of interdiction, be applicable.

Payment of broker's fees.

92. Saving any agreement to the contrary, the fee for brokerage is payable by the contracting parties in equal shares.

Rights of broker.

93. A public broker shall in respect of the bargain which he has negotiated be entitled to the brokerage fee, even though the transaction be concluded between the parties without him, but without the services of another public broker.

Apportionment of brokerage fee.

94. Where a public broker has commenced a transaction which is afterwards concluded by another according to the terms negotiated by the former, the brokerage fee shall be equally divided between the two brokers; but if the transaction is concluded otherwise than according to the terms negotiated by the former broker, the whole brokerage fee is payable to the second broker.

Non-applicability of ss.79-94 to brokers authorised under previous law.

95. The provisions of articles 79 to 94 shall not apply to brokers duly authorized to act as such before the first day of January nineteen hundred and twenty-eight.

- 96.** A commission merchant is a person who transacts business in his own name or under a firm name, for or on behalf of a principal. Definition of commission merchant.
- 97.** A commission merchant is not bound to disclose the name of the principal for whom he acts. He is directly liable to the person with whom he deals, as if the transaction were his own. Commission merchant not bound to disclose principal's name.
- 98.** The principal has no action against the person with whom the commission merchant has contracted nor can such person maintain an action against the principal. Action by third party against principal or vice-versa.
- 99.** The commission merchant may deviate from the instructions received from the principal if he is of opinion that the latter would have given his approval had he known of the altered conditions, and there has not been sufficient time to ask for and obtain his previous assent. Powers of commission merchant.
- 100.** Where instructions are given for the buying or selling of stocks, bills of exchange and other current securities or of goods having an exchange or market value, the commission merchant, unless the principal otherwise directs, may himself furnish at the current price, as seller, the things he has to buy, or hold for himself at the current price, as buyer, the things he has to sell on account of the principal, saving his right to commission. Right of commission merchant in buying or selling stocks, etc.
- 101.** In the absence of agreement or usage to the contrary, a commission merchant shall not be answerable for the performance of the obligations assumed by the person with whom he has contracted; and if he assumes such liability he is entitled to a special commission, called a *del credere* commission which, in default of agreement, is fixed by the custom of the place where the authority is executed. Liability of commission merchant.
- 102.** Every authority is deemed to include an order to conform to the usages prevailing in trade. Prevailing usages.
- 103.** It shall be in the power of the commission merchant to accept or decline the agency entrusted to him by the principal: Acceptance of agency.
- Provided that if he does not accept it, he shall, without any delay, give notice of his refusal to the principal.
- 104.** A commission merchant may relinquish the agency already accepted by him where a just cause arises inducing him to believe that the principal has not sufficient funds to meet his obligations, in which case he shall, without any delay, give him notice of his renunciation. Relinquishment of agency.
- 105.** A commission merchant who has made advances on goods forwarded to him for sale on account of the principal has a lien or privilege for the reimbursement of such advances and for interest and expenses on the value of the goods if these are already at his disposal in any warehouse or place of deposit, or if, before their arrival, he is in a position to prove that the goods have been forwarded to him. Lien or privilege in favour of commission merchant.
- 106.** A commission merchant who has bought goods on behalf of others has on such goods a like lien or privilege as mentioned in Lien or privilege on goods bought on behalf of others.

the last preceding article for the reimbursement of the price paid or to be paid by him, both if the goods are at his disposal in any warehouse or place of deposit, as well as if, before the goods come into the possession of the principal, he proves that he has forwarded the same to the principal.

Lien or privilege
on unaltered
goods.

107. The lien or privilege mentioned in the last preceding article shall likewise attach, where the goods, although already in the possession of the principal, have not undergone a substantial alteration and can still be identified.

Priority of claim of
commission
merchant.

108. A commission merchant to whom goods have been forwarded or who has bought goods on behalf of a principal has, even if such goods have been sold and delivered, a preferential claim for reimbursement on the proceeds as against the creditors of the principal, in respect of all advances made by him, and of interest and expenses.

Lien on proceeds
of goods.

109. The lien or privilege mentioned in articles 105 and 108 may be enforced on the price of the goods if such price has not been already paid or passed to account current as between the principal and the buyer.

Title V

OF COMMERCIAL OBLIGATIONS

When contract by
correspondence is
perfected.

110. A contract stipulated by means of correspondence, whether by letter or telegram, between parties at a distance, is not complete if the acceptance has not become known to the party making the offer within the time fixed by him or within such time as is ordinarily required for the exchange of the offer and the acceptance, according to the nature of the contract and the usages of trade generally.

Revocation of
contract.

111. (1) Until the contract is complete, both the offer and the acceptance may be revoked. If, however, the person making the offer declares that he will keep it open till a certain time, or if a time is implied by the nature of the contract, the revocation thereof before the lapse of such time will not prevent the completion of the contract.

(2) If the offer empowers, even impliedly, the other party to carry out the contract without previously communicating his acceptance, the contract is complete as soon as its execution has commenced within the customary or prescribed time.

Delayed
acceptance, etc.

112. A delayed acceptance or an acceptance subject to conditions, additions, restrictions or alterations shall be deemed to be and shall count as a refusal of the original offer and as a new offer.

Offer by means of
advertisements.

113. (1) An offer made to the public by means of catalogues or other advertisements is not binding unless it has been expressly declared to be so; it only amounts to an invitation to offer.

(2) The exhibition of goods constitutes an offer binding the person exhibiting them if it is accompanied by an indication of the price and all other conditions of the sale.

114. Where the parties have agreed that the verbal agreement should be reduced to writing it is presumed that they desire to subject the validity thereof to the observance of such formality.

Where parties agree to reduce verbal agreement to writing.

115. (1) In commercial obligations, co-debtors are, saving any stipulation to the contrary, presumed to be jointly and severally liable.

Co-debtors jointly and severally liable.

(2) The same presumption shall extend to a surety, even if not a trader, who guarantees a commercial obligation.

116. Where the money expressed in a contract is not legal tender in Malta and the exchange thereof is not stated, payment may be made in the money of the country according to the rate of exchange at sight at the due date and at the place fixed for the performance of the obligation, and, if there is not at such place a course of exchange, according to the rate of exchange in the nearest market, unless the clause "in cash" or an equivalent clause is contained in the contract.

Payment.

117. In commercial contracts, the implied resolute condition referred to in article 1068 of the [Civil Code](#) produces the dissolution of the contract *ipso jure*, and it shall not be lawful for the court to grant to the defendant a time for clearing the delay:

Implied resolute condition.
Amended by:
[XXII.1976.4.](#)
Cap. 16.

Provided that this article shall not apply to contracts of letting of immovable property or to contracts of emphyteusis or to contracts the dissolution whereof, in the event of failure by one of the parties to fulfil his engagements, is specially regulated by law.

118. The right competent to a debtor under article 1483 of the [Civil Code](#), in the case of assignment of a litigious right, cannot be exercised where the litigious right so assigned arises from a commercial transaction.

Litigious rights arising from commercial transactions.
Cap. 16.

Title VI

OF THE CHAMBER OF COMMERCE, ENTERPRISE AND INDUSTRY

*Provisions of this Title substituted by Act XXX of 1927.
Amended by:*
[XIII.2008.2.](#)

119. (1) The Chamber of Commerce, Enterprise and Industry is a body composed of traders, brokers, master-mariners and all other persons engaged in trade, commerce or industry.

Chamber of Commerce, Enterprise and Industry.
Amended by:
[XIII.2008.4.](#)

(2) It is recognized by the Government.

Council of the Chamber of Commerce, Enterprise and Industry.

Amended by:
[XVIII.1944.2](#);
[XIII.2008.2](#), 5.

120. (1) The said Chamber shall each year appoint, in terms of the statute approved by the said Chamber, a committee composed of members of the Chamber of Commerce, Enterprise and Industry for regulating its affairs. The persons composing the said committee shall constitute the Council of the Chamber of Commerce, Enterprise and Industry and their names shall be published in the Government Gazette.

(2) The said Council shall represent the commercial, mercantile and industrial community of Malta.

Seat of Chamber of Commerce, Enterprise and Industry.

Amended by:
[XXXIII.1990.38](#);
[XIII.2008.2](#).

121. The Chamber of Commerce, Enterprise and Industry has its seat in Valletta in the building of the Chamber of Commerce, Enterprise and Industry.

Transactions carried out in Exchange.

122. *Repealed by:* [XXXIII.1990.38](#).

Title VII

OF BILLS OF EXCHANGE, PROMISSORY NOTES, AND DRAFTS OR CHEQUES ON BANKERS OR CASHIERS

Sub-title I

OF BILLS OF EXCHANGE OF THE FORM OF A BILL OF EXCHANGE

Form of bill of exchange.

123. A bill of exchange must be dated, and must specify the place where it is drawn, the sum to be paid, the name of the person who is to pay, and the name of the person to whom or to whose order payment is to be made, the time and place of payment, and the value given, whether in cash, in goods, in account, or in any other manner; and must be signed by the drawer.

Drawer and drawee may be the same person.

124. A bill of exchange can be drawn by a person upon himself, and can be made payable at the same place where it is drawn.

Nullity of bill of exchange.

125. A bill of exchange signed by means of a cross or any other mark is null.

Discrepancy between words and figures.

126. (1) Where in a bill of exchange the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

(2) Where the amount is repeatedly expressed in figures or in words, and there is a discrepancy, the smaller amount is the amount payable.

May be drawn to order or drawer or third party.

127. A bill of exchange may be drawn to the order of a third party, or to the order of the drawer himself.

- 128.** (1) A bill of exchange may be drawn on a person, and made payable at the place of residence of a third party. May be drawn on a person and made payable at residence of third party.
- (2) It may be drawn by order and for account of a third party.

- 129.** (1) A bill of exchange may be drawn in a set, each part of the set containing a reference thereto by the words *first*, *second*, *third*, etc., in which case each part is equivalent to the whole of the parts, and the whole of the parts constitutes one bill. Bill in a set.
- (2) In the absence of such reference, each part shall be deemed to be a separate bill.

OF THE DUTIES OF THE DRAWER

- 130.** The drawer must deliver to the payee, if the latter so requires, before the bill becomes due, more than one part of the bill. Several parts may be required.

- 131.** (1) The drawer, or, where a bill is drawn for account of another party, the party for whose account the bill has been drawn, engages that at the time when the bill becomes due there shall be on his account in the hands of the drawee a supply of funds sufficient for the payment of the bill, even if such bill is payable at the place of residence of a third party. Supply of funds to meet bill.

- (2) Nevertheless, the drawer for account of another person remains personally liable towards the payee, the endorsers, and the holder of the bill.

- 132.** The drawee shall be deemed to have been put in funds if, at the time the bill becomes due, he owes a debt to the drawer, or to the party for whose account the bill was drawn, in an amount not less than that specified in the bill. When drawee is deemed to have been put in funds.

- 133.** (1) An acceptance implies the supply of funds, and constitutes a proof thereof as regards the holders and the endorsers. Acceptance implies supply of funds.

- (2) The drawer alone, whether the bill be accepted or not, is bound to prove, in case of dispute, that the persons on whom the bill was drawn were provided with the necessary funds for the payment of the bill at maturity; otherwise he is bound to warrant the bill, even though the protest is made after the lapse of the prescribed times.

- 134.** (1) The holder of a bill which has been protested shall, in no case, be entitled to the funds supplied by the drawer or by the person for whose account the bill was drawn. Protested bills.

- (2) If the bill has not been accepted, the funds supplied shall, in case of bankruptcy of the party supplying them, revert to his estate.

- (3) If the bill has been accepted, the funds supplied shall remain with the acceptor, subject to his obligation of paying the holder of the bill.

When drawer prohibits transfer of bill.

135. When the drawer has prohibited the transfer of a bill by an express declaration on the bill itself, and this notwithstanding a transfer is made, the endorsee acquires no rights other than those of the payee.

OF ENDORSEMENT

Transfer by endorsement.

136. The holder of a bill can transfer the property in it by endorsement.

To whom a bill may be endorsed.

137. A bill of exchange may be endorsed to the drawee, to the acceptor, to a prior endorser, or even back to the drawer, and may be further endorsed by each and all of them.

Where endorsement is made.

138. The endorsement is made on the back of the bill, or on a slip of paper called an *allonge* which, when necessary, is attached to the bill itself.

Endorsement may be special or in blank.

139. An endorsement may be made by specifying the name of the person to whom, or to whose order the bill is to be payable, the date of the endorsement, and other particulars; it may also be made in blank by the mere signature of the endorser.

Liability of endorser.

140. (1) The endorser is liable to every succeeding holder for the acceptance and payment of the bill.

Qualified endorsement.

(2) Nevertheless, where the endorsement is qualified by the words "without recourse" or by some other form of words implying a like qualification, the endorser who has so qualified the endorsement is exempted from all liability on his endorsement.

Endorser prohibiting transfer not liable to succeeding endorsees.

141. Where an endorser has in his endorsement expressly prohibited any further transfer of the bill, the parties to whom such bill is subsequently endorsed have no right of recourse against such endorser.

Effect of restrictive endorsement.

142. Where the endorsement is made with the order "for collection" or any other expression implying an order by the endorser, such endorsement does not pass the property in the bill, but merely transmits to the endorsee the order therein contained, and in such case the endorsee can only transmit to other parties the same order by a similar endorsement.

Where endorsement is made after lapse of time for protest for non-payment or non-acceptance.

143. (1) Where the endorsement is made after the expiration of the time within which the protest for non-payment is to be made, the endorsee acquires, as against the drawee, all the rights arising from the acceptance already made, and the rights of recourse against such parties as shall have endorsed the bill after the lapse of the said time.

(2) The provisions of this article shall also apply where the endorsement is made after the expiration of the time within which the protest for non-acceptance is to be made.

- 144.** Where the endorsement is made after the bill has been protested for non-payment, such endorsement shall not vest in the endorsee any rights other than those competent to his endorser against the drawee, if the drawee has accepted the bill, and against such endorsers as may be still liable on the bill. Rights of endorsee where endorsement is made after protest for non-payment.
- 145.** In the cases referred to in the last two preceding articles, the endorsee maintains unimpaired his rights against the drawer, and against the person for whose account the bill was drawn. Rights of endorsee against drawer.
- 146.** Where the endorser has in his endorsement specified the time for the presentment of the bill to the drawee, the liability created by the endorsement ceases, if the bill is not presented for acceptance within the time so specified. Where endorser specifies time for presentment of bill.
- 147.** The mere possession of a bill of exchange not endorsed to the holder entitles the holder to present such bill for acceptance, and to protest it for non-acceptance. Rights of holder where bill is not endorsed to him.

OF ACCEPTANCE

- 148.** The acceptance of a bill of exchange must be made on the bill itself by the signature of the acceptor, with or without the words "I accept" or "accepted". Form of acceptance.
- 149.** The acceptance must be dated, if the bill is payable at a certain period after sight or at usance. The omission of the date of acceptance renders the bill payable at the time specified in the bill, such time to run from the date of such bill. When acceptance is to be dated.
- 150.** (1) An acceptance cannot be conditional, but it may be partial as to the amount to be paid. Acceptance cannot be conditional, but may be partial.
- (2) A conditional acceptance shall be deemed to be a refusal to accept.
- 151.** (1) A bill of exchange shall be accepted on presentment, or at the latest within twenty-four hours after presentment. When bill is to be accepted.
- (2) Where, after the expiration of the said time, the bill is not re-delivered, accepted or unaccepted, the party who retained the bill shall be liable in damages and interest to the holder.
- 152.** (1) The acceptor of a bill by accepting it engages that he will pay the amount thereof, and cannot be relieved from such engagement, even though the drawer, or the party for whose account the bill was accepted, may, without his knowledge, have become bankrupt previously to the acceptance of the bill. Obligations of acceptor.
- (2) Nevertheless, when the acceptor has not been put in funds, he may resort to the drawer or to the party for whose account the bill was accepted; in any such case the acceptance raises only a rebuttable presumption against the acceptor, who shall have the right to prove the contrary.

Protest for non-acceptance.	153. (1) A refusal to accept shall be proved by means of a protest termed protest for non-acceptance. (2) Where the bill is not accepted for the whole amount for which it is drawn, a protest for non-acceptance of the balance shall be made.
Duty of drawer and endorsers upon notification of protest for non-acceptance.	154. Upon notification of the protest mentioned in the last preceding article, the endorsers and the drawer are respectively bound to give sufficient security for the payment at maturity of the amount of the bill or of the amount for which it was not accepted, or to pay the bill together with the expenses of protest and of re-exchange.
Where acceptor's condition changes after acceptance of bill.	155. Where, after the acceptance of the bill, it is proved that the acceptor's condition, with regard to his commercial affairs, has so changed as to give rise to a reasonable fear that the bill will not be paid at maturity, it shall be lawful to demand against the drawer, the endorsers, and even against the acceptor himself, the same security as that mentioned in the last preceding article.
Obligation of surety.	156. A person who stands surety for one only of the parties bound to give security, shall be jointly and severally liable only with the party for whom he stands surety.
Promise to accept bill.	157. A promise to accept a bill of exchange does not amount to an acceptance, but the promisee may maintain an action for damages and interest against the promisor if the latter refuses to perform the promise.

OF ACCEPTANCE FOR HONOUR OR BY INTERVENTION

Acceptance for honour or by intervention.	158. (1) Where a bill of exchange is protested for non-acceptance, any person, not being a party already liable thereon, may intervene and accept the bill for the honour of the drawer, or of one of the endorsers, with or without an order to that effect from such drawer or endorser. (2) The drawee himself may, after the protest for non-acceptance, intervene as stranger as aforesaid.
Order of preference where several persons offer to accept for honour.	159. Where several persons offer to accept for honour, the following shall have the preferences: (a) those who intervene for the drawer or for the party for whose account the bill is drawn; (b) those who intervene for the endorsers according to the order of the endorsements.
Option of holder.	160. Where several persons offer to accept by intervention for one and the same party, the holder of the bill may choose any one

of them.

161. Nevertheless, the party instructed to intervene by the person for whom he offers to accept shall, in all cases, have the preference over those who offer to accept for the same person, without such instructions.

Preference to be given to party instructed to intervene.

162. The holder of a bill of exchange may, as any other person, accept by intervention, and he may, in like circumstances, give the preference to himself.

Holder of bill may accept for honour.

163. An acceptance for honour must be written on the bill and be signed by the acceptor for honour, and mention thereof shall be made in the act of protest or in a subsequent act forming an extension thereof or appended thereto.

Acceptance for honour how made.

164. The acceptor for honour shall cause the protest for non-acceptance to be delivered to him, and shall, without delay, give notice of his intervention to the party for whose honour he has intervened, and communicate to such party the said protest: in default, he shall be liable in damages and interest.

Duties of acceptor for honour.

165. Where the acceptor for honour does not state for whose honour he intervenes, the acceptance shall be deemed to be made for the honour of the drawer, or of the party for whose account the bill is drawn, if the name of such party appears on the bill.

Where acceptor for honour does not state for whom he intervenes.

166. (1) Notwithstanding any acceptance for honour, the holder of a bill maintains unimpaired all such rights as are competent to him against the drawer and the endorsers for want of acceptance by the drawee.

Rights of holder in case of acceptance for honour.

(2) Nevertheless, where a reference in case of need has been inserted in the bill by the drawer himself, and the bill is accepted by the referee in case of need, the security mentioned in article 154 shall not be competent.

167. (1) A bill accepted for honour must be presented to the original drawee for payment at the time it falls due, and be protested against him in case of non-payment.

Bill accepted for honour to be presented for payment to original drawee.

(2) In default of such protest, the acceptor for honour shall not be bound to pay the bill, and if he pays the bill notwithstanding such default, he shall lose his right of recourse against such parties as may have had an interest that the bill be protested against the drawee.

OF JOINT AND SEVERAL LIABILITY

168. All parties who have signed, accepted, or endorsed a bill, are jointly and severally liable for warranty to the holder.

Parties to a bill jointly and severally liable.

OF SURETY PAR AVAL

<i>Aval.</i>	169. Independently of the acceptance and endorsement, the payment of a bill of exchange can be guaranteed by an <i>aval</i> , which is an obligation of a third party.
How <i>aval</i> is given.	170. <i>Aval</i> can be given on the bill itself, or by a separate act, or even by letter.
Liability of party giving <i>aval</i> .	171. The party giving the <i>aval</i> is liable jointly and severally, and in the same manner as the drawer and the endorsers, unless the parties have agreed otherwise.

OF MATURITY AND PAYMENT

Time of payment.	172. A bill may be expressed to be payable - (a) at sight; (b) at a certain time or on a certain day; (c) at a certain time after sight; (d) at a certain time after date; (e) at usance.
At sight.	173. A bill expressed to be payable at sight is payable on presentment.
At a certain time or on a certain day.	174. A bill expressed to be payable at a certain time or on a certain day is payable at the time or on the day expressed therein.
Bill payable in the middle of the month.	175. Where a bill is expressed to be payable in the middle of a certain month, the bill shall be deemed to become due on the fifteenth day of that month.
Bill payable at a certain time after sight, or after date.	176. A bill expressed to be payable at a certain time after sight, or at a certain time after date, is payable - (a) if the time is stated in days, on the last day thereof: provided that in the case of a bill expressed to be payable at a certain time after sight, the day on which the bill was presented for acceptance shall not be reckoned, and in the case of a bill expressed to be payable at a certain time after date, the day of the date of the bill shall not be reckoned; (b) if the time is stated in weeks or months, on the day of the week or month which corresponds, in name or number, with the day on which the bill was presented for acceptance or with the day of the date of the bill: Provided that where there is no such date in the month of payment, the bill shall be deemed to fall due on the last day of such month.
Half a month.	177. The time expressed by the words "half a month" shall be equivalent to fifteen days.
Gregorian calendar.	178. The months are reckoned according to the Gregorian calendar.

- 179.** A bill expressed to be payable at usance is payable at twenty-one days from the day on which the bill was presented for acceptance. Bill payable at usance.
- 180.** In the absence of any of the indications mentioned in article 172, the bill shall be payable at sight. Where no time is expressed, bill is payable at sight.
- 181.** If the day on which a bill becomes due falls on a Sunday or on a Holy day of obligation or on Good Friday or on any other public holiday, the bill shall be payable on the day next following, not being a public holiday. When day of maturity is a Sunday, etc.
Amended by:
V.1904.8.
- 182.** A bill shall be deemed to be due from the moment the drawee is adjudged bankrupt, and in such case the holder may protest the bill as provided in article 191; but the drawer and the endorsers may, if called upon to pay the bill, postpone payment until the day on which the bill shall be due according to the terms in which it is drawn, on giving the security mentioned in article 154. Where drawee is adjudged bankrupt.
- 183.** A bill of exchange must be paid in the money specified therein. Nevertheless, if the money specified in the bill is fictitious or is not legal tender in the place where payment is to be made, and the value thereof has not been stated in the bill, the payment shall be made in the money which is legal tender at the place of payment, in an amount corresponding to the value of the money specified in the bill at the time of maturity, unless the drawer, by the use of the clause "in cash" or other equivalent clause, shall have expressly required payment to be made in the money specified by him, not being fictitious money. In what money bill is payable.
- 184.** The payer of a bill is not bound to verify the genuineness of the endorsements. Payer not bound to verify genuineness of endorsements.
- 185.** A party paying a bill before it becomes due shall be answerable for the validity of the payment. Anticipated payment.
- 186.** A party paying a bill at maturity, and without any opposition, shall be deemed to be lawfully discharged. Payment at maturity without opposition operates as valid discharge.
- 187.** The holder of a bill cannot be compelled to receive payment thereof before it becomes due. Holder cannot be compelled to receive anticipated payment.
- 188.** The payment of a bill on a second, third, or other part, shall be valid, provided it is specified on such second, third, or other part, that such payment annuls the effect of the other parts of the bill. Payment of part of a bill drawn in sets.
- 189.** A party paying a bill on a second, third, or other part, without taking back the part which he has accepted, shall not be discharged with respect to a third party in possession of the accepted part, saving his right of recourse against the party to whom payment was unduly made. Where accepted part is not taken back by payer.
- 190.** Where a bill is drawn in a set consisting of a first, second, third, or other part, and the drawee has accepted more than one part, he is bound to pay all the accepted parts which shall be presented to him at maturity by the different holders thereof, saving

	his right of recourse against the person who made use of more than one of the parts of the bill.
Protest for non-payment.	191. A refusal of payment of a bill shall be proved by means of a protest termed protest for non-payment.
Payment of bill not endorsed to holder.	192. A person who claims the payment of a bill which has not been endorsed to him, but who, at the same time, proves that the bill was remitted to him to receive payment thereof, may, upon giving sufficient security, demand payment of the bill, and protest it in case of non-payment.
Liability of holder obtaining payment of bill.	193. The holder of a bill who receives payment thereof, and all prior endorsers shall be liable to the party paying the bill, as guarantors of the validity of all antecedent endorsements.
Payment to be made against delivery of bill.	194. Saving the case referred to in articles 201 and 202, the party liable for the payment of the bill is not bound to effect payment thereof except against the delivery of the bill duly discharged.
Part-payment.	195. (1) The holder of a bill cannot refuse to receive from the drawee part-payment thereof, even though the bill may have been accepted by the drawee himself, or by any other party, for the whole amount, but the holder must protest it for the balance. (2) The party making such part-payment cannot, however, claim that the bill be delivered up to him, but can only demand that the amount paid be endorsed upon the bill, and that a copy of the bill with the discharge of the amount paid, be given to him.
Where bill is not presented for payment. <i>Amended by: L.N. 148 of 1975; XXIV.1995.362.</i>	196. If a bill is not presented for payment at the time it becomes due, the acceptor may, after the expiration of the time within which protest for non-payment is to be made, lodge the amount of the bill in the Civil Court, First Hall, at the expense and risk of the holder.
Pleas personal to endorsers.	197. Pleas which are personal to the endorsers may not be set up against the holder of a bill.
Pleas personal to holder.	198. (1) Pleas which are personal to the holder of a bill cannot delay the payment thereof, unless the pleas are such as can be conveniently and speedily disposed of in the pending action. (2) Where such pleas require a prolonged enquiry, the examination thereof shall be referred to an independent action and, meanwhile, the judgment ordering the payment of the bill, with or without security, as the court shall deem fit, shall not be delayed.
Opposition to payment of bill.	199. No opposition to the payment of a bill shall be allowed except in case of loss of the bill or bankruptcy of the holder.
Loss of non-accepted bill.	200. In case of loss of a non-accepted bill, the party to whom such bill belongs may demand the payment thereof upon a second, third, fourth, or other part.
Loss of accepted bill.	201. Where the lost bill is an accepted bill, payment cannot be claimed upon the second, third, fourth, or other part, unless the party claiming payment duly proves his title thereto and gives sufficient security.

- 202.** Where the party who has lost the bill, whether accepted or not, is unable to present a second, third, fourth, or other part thereof, he can nevertheless demand and obtain payment, if he duly proves his title thereto and gives sufficient security. Where holder is unable to present any part of the bill.
- 203.** The obligation arising from the security mentioned in the last two preceding articles shall be extinguished after the lapse of three years. Extinguishment of obligation arising from security.
- 204.** In the absence of the security referred to in articles 201 and 202, it shall be lawful, on furnishing the proof of title required in those articles, to demand that the amount due on the lost bill be lodged in the Civil Court, First Hall. When deposit of amount of lost bill may be demanded.
Amended by:
L.N. 148 of 1975;
[*XXIV.1995.362.*](#)
- 205.** In case of non-payment on a demand to that effect in accordance with the provisions of articles 201 and 202, the owner of the lost bill shall, in order to preserve all his rights, cause a deed of protest to be drawn up, and to be notified to the drawer and the endorsers, within the time and in the manner hereinafter prescribed with regard to the protest for non-payment. Deed of protest in case of a lost bill.
- 206.** The owner of a lost bill, in order to obtain the second, third, or other part thereof, shall apply to his immediate endorser, and such endorser shall be bound to give his assistance to, and allow the said owner to proceed in his name against his own endorser, and so on from one endorser to another up to the drawer of the bill. Liability of immediate endorser to holder endorsee of lost bill.
- 207.** The owner of the lost bill shall bear all the expenses resulting from the loss. Owner of lost bill liable for expenses.
- 208.** Where a party refuses to give a second, third, or other part, upon being required so to do under article 206, he shall be liable in damages and interest. Liability for damages in case of refusal to give second, third, or other part.

OF PAYMENT FOR HONOUR OR BY INTERVENTION

- 209.** Where a bill of exchange has been protested for non-payment, any person may intervene and pay it *supra protest* for the honour of the drawer or any of the endorsers. Payment for honour.
- 210.** A payment for honour shall be recorded in the act of protest or in a separate act, forming an extension thereof or appended thereto. How recorded.
- 211.** (1) A party paying a bill of exchange *supra protest* succeeds to the rights of the holder, and also to his duties with regard to the formalities to be observed. Rights and duties of payer for honour.
- (2) Moreover, he must give immediate notice of the payment to the party for whose honour he has intervened, under penalty of damages and interest.
- 212.** (1) Where payment *supra protest* is made for the honour of the drawer, all the endorsers shall be discharged. Discharge of endorsers.

(2) Where the payment is made for the honour of a particular endorser, all subsequent endorsers shall be discharged.

Where two or more persons offer to pay *supra protest*.

213. Where two or more persons offer to pay a bill *supra protest*, the rules in regard to acceptance by intervention shall apply.

Preference to be given to drawee.

214. Nevertheless, where the original drawee, against whom the protest for non-acceptance was made, is willing to pay the bill at the time it becomes due, he shall have preference over all the parties who offer to pay the bill by intervention.

Rights of acceptor by intervention where bill is paid by others.

215. An acceptor by intervention, who does not pay the bill because it is paid by the drawee or any other party, is entitled to recover from the payer the expenses which he has incurred, and a commission of one-third *per centum*.

When payer for honour forfeits right of recourse.

216. The payer for honour, where another party, having preference over him, has offered to pay the bill, shall have no right of recourse against such endorsers as would have been discharged by the payment if made by such other party.

Bill and protest to be delivered up to payer for honour.

217. The payer for honour is entitled to the delivery up of the bill itself and the protest for non-payment, and he is bound to refund the expenses of the protest.

OF THE RIGHTS AND DUTIES OF THE HOLDER

Holder to present bill for payment or for acceptance.

218. The holder of a bill of exchange payable in Malta at sight, or at a certain time after sight, or at usance, is bound to present it for payment or for acceptance, within the times prescribed in the next following article, to be reckoned from the date of the bill, under penalty of forfeiting his right of recourse against the endorsers, and even against the drawer, if the latter has provided funds to meet the bill.

Times within which presentment is to be made.

219. The times referred to in the last preceding article are-

- (a) six months, if the bill is drawn at a place in Europe, Asia Minor, Syria, Egypt, Tripoli, Tunis, Algiers or Morocco;
- (b) one year, if the bill is drawn at any other place;
- (c) one month, if the bill is drawn and made payable in Malta:

Provided that in time of maritime war, the times mentioned in paragraphs (a) and (b) shall be doubled.

Bill payable outside Malta.

220. The same forfeiture mentioned in article 218 shall be incurred by the holder of a bill drawn in Malta, and payable, whether at sight, or at a certain time after sight, or at usance, in any

of the countries mentioned in the last preceding article, if the holder shall not present it for payment or acceptance within the times stated in that article.

221. The holder of a bill drawn at a certain time or at a certain day, or at a certain time after date, is not bound to present the bill for acceptance, but if he elects to present it, he is bound to protest it in case of non-acceptance.

Certain bills need not be presented for acceptance.

222. The provisions contained in articles 218, 220 and 221 shall not apply to such drawer or endorser as may have lawfully given different directions.

Where drawer or endorsers give different directions.

223. The holder of a bill shall present it for payment on the day it falls due.

Presentment for payment to be made at maturity.

224. The presentment of a bill for acceptance or payment, the protest, the request for a duplicate of the bill, as well as all other acts against a particular party with regard to a bill, shall be made at such party's place of business or otherwise at his residence.

Place at which presentment, protest, etc., are to be made.

225. (1) The holder of a bill cannot demand the acceptance thereof, or the delivery of a duplicate, or the performance of any other act relating thereto, except on a day not being a public holiday.

Acceptance not demandable on Sundays, etc.
Amended by:
V.1904.9.

(2) If the last day on which the performance of any of such acts was demandable falls on a Sunday, or on a Holy day of obligation, or on Good Friday, or on any other public holiday, the performance shall be demanded on the next following day, not being a public holiday.

(3) The provisions of this article shall also apply to the protest.

226. (1) The protest for non-acceptance shall be made on the day next succeeding that on which the bill was presented for acceptance.

When protest is to be made.

(2) The protest for non-payment shall be made on the day next succeeding that on which the bill becomes due.

227. (1) The protest for non-acceptance, or the death or bankruptcy of the party on whom the bill is drawn, shall not excuse the holder from protesting the bill in case of non-payment.

Protest for non-acceptance, etc., does not excuse holder from making protest for non-payment.

(2) Where the acceptor becomes bankrupt before the bill falls due, the holder may protest the bill and exercise his right of recourse.

228. Where a party is named in the bill for the purpose of accepting or of paying it by intervention, and the drawee refuses to accept the bill, the holder shall, after protesting the bill against the drawee, present it for acceptance by the party named in the bill.

Holder to demand acceptance from party named in the bill in case of refusal of drawee to accept same.

Holder to demand payment from acceptor for honour, etc., in case of refusal of drawee to pay the bill.

229. Where the party on whom the bill was drawn refuses to pay it, the holder shall, after protesting the bill against him, present it for payment to the acceptor for honour, and, in case of refusal by the latter, to any other party named in the bill for the acceptance or payment thereof in case of need.

Refusal of acceptor for honour, etc., to be recorded in or after protest.

230. The refusal, whether to accept or to pay, by any of the parties referred to in the last two preceding articles, shall be mentioned in the act of protest against the drawee or subsequently thereto.

Holder cannot refuse acceptance or payment for honour.

231. (1) The holder of a bill which has been protested for non-acceptance or non-payment cannot refuse the acceptance or payment offered by a party intervening for the honour of the drawer or any of the endorsers.

(2) Nevertheless, any such acceptance for honour shall not operate so as to bar the holder from demanding the security mentioned in article 154.

Retour sans protêt.

232. A request or direction contained in a bill that it shall be returned without protest (*retour sans protêt*), excuses the holder from the obligation of protesting the bill, but shall not excuse him from the obligation of presenting the bill in due time.

Notice of non-acceptance and of non-payment.

233. (1) The holder of a bill protested for non-acceptance or non-payment shall, without delay, give notice thereof in writing to the endorser immediately preceding him.

(2) Every endorser on receiving such notice shall, without delay, communicate it to the endorser immediately preceding him.

(3) The notice referred to in this article shall be accompanied by the protest.

Where address of endorser is not stated in endorsement.

234. Where a party has endorsed a bill to another party without stating his address, notice of non-acceptance or non-payment shall be given to the endorser next preceding him.

When holder loses his right of recourse.

235. It shall not be competent to the holder of a bill, in case of non-payment, to exercise his right of recourse against the drawer or the endorsers -

(a) if the bill was not presented for acceptance, where necessary, or for payment, to the drawee or the parties mentioned in articles 228 and 229;

(b) if the holder has refused acceptance or payment by a party intervening for the honour of the drawer or of any of the endorsers.

Other cases in which holder loses his right of recourse.

236. Nor shall it be competent to the holder to exercise his right of recourse against the endorsers or the drawer who has supplied funds to the drawee or to the parties mentioned in articles 228 and 229, if he has failed to comply with the provisions of articles 226, 230 and 233.

How right of recourse may be exercised.

237. The holder of a bill protested for non-payment may exercise his right of recourse against all the obligors jointly, or against only one or some of them, without forfeiting his right of

recourse against the others not sued on the bill, and he shall not be bound to follow the order of the endorsements.

238. The right of recourse against endorsers and drawers residing in Malta, in the case of bills, protested for non-payment, drawn in Malta and payable elsewhere, shall be exercised within -

Times within which right of recourse against endorsers and drawers resident in Malta is to be exercised.

- (a) twelve months, if the bill was payable at a place in Europe, Asia Minor, Syria, Egypt, Tripoli, Tunis, Algiers or Morocco;
- (b) eighteen months, if the bill was payable in any other country:

Provided that such times shall be doubled in time of maritime war.

239. The times specified in the last preceding article shall commence to run -

Running of times.

- (a) with regard to the holder of the bill, from the date of the protest for non-payment;
- (b) with regard to each endorser, from the day on which the payment was demanded from him, if he pays voluntarily, or, otherwise, from the day on which a judicial demand for payment was made against him.

240. After the expiration of the times specified in the last two preceding articles, the holder and the endorsers of the bill shall lose their right of recourse.

Right of recourse barred by lapse of time.

241. (1) In case of bankruptcy of one or more of the parties liable on a protested bill, the holder thereof may put forward his claim for the satisfaction of the whole debt against the estate of each of the bankrupts.

Where one or more of the parties liable on the bill are bankrupt.

(2) Where a dividend is received from the estate of one of the bankrupts, the parties liable on the bill, who are not bankrupts, as well as the estates of the other bankrupts, shall be only discharged to the extent of the dividend so received.

242. (1) Nevertheless, where the holder of a bill accepts a voluntary arrangement with the drawer or the acceptor, he shall lose his right of recourse against all the endorsers.

Where holder accepts voluntary arrangement.

(2) Where the arrangement is made with one of the endorsers, the holder loses his right of recourse against all the subsequent endorsers, but preserves his rights against the acceptor. He preserves his rights also against the prior endorsers and the drawer, unless such endorsers or drawer prove that they have been prejudiced by such arrangement and provided the holder has expressly reserved his rights against them.

(3) Where the arrangement is made with the drawer, the acceptor, if he has not been put in funds, shall be entirely discharged.

(4) Finally, where the arrangement is voluntarily made with the acceptor, and such acceptor has been put in funds, the holder loses

his right of recourse against the drawer.

When right of
recourse revives.

243. The right of recourse shall revive in favour of the holder against the drawer or endorser who, after the expiration of the times prescribed for the protest, the notice, and the exercise of the aforesaid right, has received on account, or by way of compensation, or in any other manner, the funds assigned for the payment of the bill.

Payer entitled to
have bill delivered
up to him.

244. Any party liable on a bill of exchange shall, on paying the amount thereof, together with the interest and incidental expenses, be entitled to have the bill, duly discharged, delivered up to him.

Acceptance and
endorsements
operative even if
signature of drawer
is forged.

245. The acceptance and the endorsements, if genuine, shall continue to be effectual, even if the signature of the drawer is forged or fraudulently altered.

Where bill contains
forged acceptance
or endorsement.

246. If a bill contains a forged acceptance or endorsement, or an acceptance or endorsement fraudulently altered, all the endorsers and the drawer, whose signatures are genuine, shall continue to be liable on such bill.

OF PROTEST

Protest to be drawn
up by a notary
public.

247. Protests for non-acceptance or non-payment shall be drawn up by a notary public, who shall go to the place of business or residence of the party bound to accept or to pay, and request him to accept the bill or to pay the amount thereof.

Form of protest.

248. (1) The act of protest must contain a *verbatim* copy of the bill, of the acceptance, if the bill had been already accepted, of the endorsements, and of the instructions given therein, and must specify -

- (a) the name of the person in whose favour the protest is made;
- (b) the demand to accept or to pay made to the party against whom the protest is made;
- (c) the fact whether the party bound to accept or to pay was present or absent;
- (d) the reason of the refusal to accept or to pay;
- (e) the date on which the demand was made or unsuccessfully attempted.

(2) In case of acceptance or payment for honour, the protest shall specify by whom, for whose honour, and in what manner the bill has been accepted or paid.

Ineffectual
inquiries to be
noted.

249. Where the notary has not been able to find the party bound to accept or to pay, or to ascertain whether such party has any place of business, or to discover his place of residence, he shall expressly state in the protest that his inquiries have been unsuccessful.

250. Where the demand for acceptance or payment is to be made to two or more persons, it shall be sufficient to draw up a single act of protest with respect to such demand.

A single act of protest to be drawn up even where the demand is to be made to several persons.

251. No other act by the holder of the bill can supply the want of the act of protest, saving the cases provided for in articles 199, 200, 201 and 202 with regard to lost bills.

Want of protest cannot be supplied by other means.

OF RE-EXCHANGE

252. Re-exchange is effected by means of a re-draft.

How effected.

253. A re-draft is a fresh bill drawn by the holder in order to recover from the drawer or from one of the endorsers the amount due to him as holder of the protested bill, in accordance with the provisions of article 256.

Definition of re-draft or retraite bill.

254. Re-exchange is regulated according to the course of exchange of the place in which the re-draft is drawn on the place where the reimbursement is to be made.

How re-exchange is regulated.

255. A re-draft must be accompanied by an account termed "account of re-draft".

Re-draft to be accompanied by account of re-draft.

256. (1) Such account shall comprise -

Contents of account.

- (a) the amount of the protested bill;
- (b) the expenses of the protest, and other lawful expenses, such as those of commission, brokerage and postage;
- (c) the name of the party on whom the re-draft is drawn, and the rate of exchange at which it is negotiated, such rate of exchange to be certified by a broker or two merchants.

(2) The said account shall be accompanied by the protested bill and the protest.

257. Where there is no course of exchange between the place at which, and the place on which a re-draft is drawn, the re-exchange shall be reckoned according to the course of exchange on the place nearest to that on which the re-draft is drawn.

Where there is no course of exchange between place where re-draft is drawn and place on which it is drawn.

258. Interest on the sum specified in the bill protested for non-payment, on the expenses of protest, and on all other lawful expenses, shall be recoverable as from the day of the protest.

Interest.

259. No payment may be claimed on a re-draft unless the account of re-draft be accompanied by the certificate prescribed in article 256.

Absence of certificate bars claims on re-draft.

*Sub-title II*OF PROMISSORY NOTES, AND DRAFTS OR CHEQUES ON
BANKERS OR CASHIERS

Provisions relating
to bills of exchange
applicable to
promissory notes.

260. The provisions applicable to bills of exchange, and relating to endorsement, joint and several liability, *aval*, time of maturity, payment, payment for honour, protest, duties and rights of the holder, and re-exchange, shall apply to promissory notes.

Contents of
promissory note.

261. (1) A promissory note shall state the date, the amount to be paid, the person in whose favour or to whose order such note is signed, the time when payment is due, and the value supplied in cash, goods, in account or in any other manner.

(2) It may also be drawn payable to bearer.

Drafts or cheques.

262. (1) Drafts or cheques on bankers or cashiers shall be dated, and shall specify the sum to be paid, and shall be made payable to a person therein named, or to his order, or to bearer.

(2) They shall be payable on presentment.

Consequence of
delay in presenting
cheque.

263. Where the holder of a cheque fails to cash it within three days from the date thereof, and, after such time, the banker or cashier refuses to pay, the holder who has received the cheque from a third party has no right of recourse against such party, nor against the maker of the cheque, if the latter proves that he had in the hands of the banker or cashier sufficient funds to meet the cheque, and that such funds did not cease to be available through his fault.

TITLE VIII

OF THE CONTRACT OF ACCOUNT CURRENT

Definition of
account current.

264. Account current is a contract whereby two persons covenant that their mutual remittances be entered in an account as items of debit and credit, subject to the obligation of the party against whom a balance is found at the time the account is wound up to pay such balance.

Ownership of
remittances.

265. Every remittance made in pursuance of such contract shall be deemed to pass in absolute ownership from the remitter to the remittee.

Items of debit and
credit.

266. The items of debit and credit shall be deemed to be two indivisible amounts:

Provided that, in default of an agreement to the contrary, every right of action or defence relating to any act or contract giving rise to each separate remittance shall remain unimpaired; and, where

any such act or contract is annulled, the items relating thereto shall be struck out of the account.

267. (1) The party who has included in the account a debt secured by a pledge or a hypothec shall be entitled to enforce such security for the payment of any balance which may be found for him.

Where secured claim is passed to account current.

(2) The provisions of this article shall also apply with regard to any claim passed to account current which is secured by the obligation of a surety or a co-debtor.

268. (1) All remittances of debts due, whatever their origin, shall be deemed to be passed to account current under the clause "subject to collection".

Remittances of debts due.

(2) If any such debt remains unpaid, the remittee may elect either to strike the item out of the account or to sue the remitter thereof for the payment of the debt.

269. Any creditor of any of the parties to an account current may sue out a garnishee order against his debtor in the hands of the other party to the account, provided that any such order shall be operative only when and if a final balance is found for such debtor on the winding up of the account.

Garnishee order against a party to an account.

270. (1) It shall not be lawful for the debtor, after the execution of the garnishee order referred to in the last preceding article, to impair his credit account by fresh remittances:

Debtor not to impair his position in account current.

Provided that any remittance the title to which accrued in favour of the other party to the account current before the issue of the garnishee order, shall not be deemed to be a fresh remittance.

(2) The party to the account current in whose hands the attachment is made may, on being served with the garnishee order, demand the dissolution of the contract.

271. Save as otherwise agreed upon between the parties, an account current shall be wound up yearly.

Account current to be wound up yearly.

272. The death, or the supervening disability, or the bankruptcy of a party to an account current shall not operate so as to determine the contract, unless the heir, or representative, or the other party to the account, as the case may be, elects to determine the contract by means of a judicial intimation to that effect within three months from the happening of any of the aforesaid events.

Effects of death, disability or bankruptcy of party to an account current.

PART II

OF MARITIME TRADE AND OF NAVIGATION

Title I

OF THE CONTRACT OF AFFREIGHTMENT

Sub-title I

GENERAL PROVISIONS

Contract of affreightment.	273. A contract of affreightment is an agreement for the hire of a vessel.
Different kinds of affreightment.	274. The affreightment can be - (a) for the entire vessel or for a part thereof; for one or more voyages; (b) for the conveyance of goods in a general ship or <i>à la cueillette</i> that is, when the master receives goods separately from several persons and engages to ship and convey such goods.
When contract is to be made in writing.	275. Where the vessel, chartered whether in whole or in part, is of more than thirty tons tonnage, the contract is null unless made in writing.
Rules as to time for loading and discharging, in the absence of agreement.	276. If the period for loading and discharging is not fixed by agreement, the following rules shall be observed: (a) The period for loading or discharging in Malta is of eight days, if the vessel is of one hundred tons or less; of twelve days, if the vessel is of more than one hundred tons but not more than two hundred; of twenty days, if the vessel is of more than two hundred tons. Such period shall be reckoned from the time when the master declares that he is ready to load or discharge. The days mentioned in this article are successive working days. (b) Outside Malta, the period for loading or discharging shall be determined according to the laws and usages of the place of loading or discharging and if the loading or discharging is to be effected in different places, the period shall be determined according to the laws and usages of the place where the last portion of the cargo is loaded or discharged.
Where loading or discharging is to be effected at different places.	277. Where a portion of the cargo is to be loaded or discharged in one place and the remainder in another, the time employed in proceeding from one place to another shall not be computed in the time limited for loading or discharging.
Where person letting vessel makes untrue statement as to tonnage thereof.	278. (1) If the person letting the vessel declares the vessel to be of a tonnage greater than her real tonnage, he shall be liable to a proportionate abatement of the freight, and shall be answerable for damages and interest to the freighter. (2) The provisions of this article shall not apply, where the difference between the declared tonnage and the real tonnage does not exceed a fortieth part of the real tonnage.
When freight can be demanded.	279. The payment of the freight can be demanded immediately after the delivery of the cargo.

280. (1) Where the vessel is chartered by the month, the freight runs from the time of the commencement of the voyage.

When freight commences to run in cases where vessel is chartered by the month.

(2) A voyage is deemed to be commenced as soon as the vessel has left the place where the loading commenced, or if the vessel sails in ballast, from the place where the ballast was shipped.

281. The buyer or any other successor is bound to abide by the terms of the contract of affreightment stipulated by the seller or any other prior possessor of the vessel.

Buyer, etc., bound by affreightment previously stipulated by the seller, etc.

Sub-title II

OF THE RIGHTS AND DUTIES OF THE PERSON LETTING THE VESSEL AND THE FREIGHTER

282. If the freighter has not shipped any portion of the cargo within the period fixed in the contract or determined by law, the person letting the vessel may, at his option, either -

Where freighter does not ship any portion of cargo.

- (a) claim the indemnity fixed in the contract, or, failing any covenant thereanent, an indemnity to be assessed by experts; or
- (b) rescind the contract, and claim from the freighter half the freight; or
- (c) on the lapse of two days from the date of service of a protest, undertake the voyage without a cargo, and, on the completion of the voyage, claim from the freighter the freight in full, besides the amount of demurrage, if any, and the expenses incurred for the protest and for any other act which it was necessary for him to make.

283. If within the period aforesaid, the freighter has shipped only a portion of the cargo, the person letting the vessel may, at his option, either -

Where freighter ships only a portion of cargo.

- (a) demand the indemnity mentioned in the last preceding article; or
- (b) on the lapse of two days from the date of service of a protest, undertake the voyage with the portion so shipped, and claim the freight, the demurrage, and the expenses, as provided in the last preceding article.

284. If during the voyage the vessel which has sailed without a cargo, or with a portion only of the cargo, sustains a loss which would have given rise to a general average in case the vessel had taken on board a full cargo, the person letting the vessel may claim from the freighter a contribution reckoned on two-thirds of the goods which the latter failed to ship.

Contribution to general average where freighter fails to ship cargo, or ships only a portion thereof.

285. If the freighter has not shipped any portion of the cargo, and abandons the contract before the commencement of the period of demurrage, he must pay to the person letting the vessel half the

Where freighter abandons contract.

freight.

Person letting vessel may take in other goods in the place of those not shipped by freighter.

286. (1) Where the person letting the vessel is entitled to sail without a cargo, or with a portion only of the cargo, he may, for the purpose of securing the freight and the contribution to general average, take in other goods, even without the consent of the freighter.

(2) In any such case the freight for such other goods shall be accounted to the original freighter, who shall, moreover, be discharged from such contribution to general average as shall have been paid by such other goods.

When freighter ships more than agreed upon.

287. Where the freighter ships more than was agreed upon, he shall pay freight on the excess at the rate stipulated for the quantity agreed upon.

Liability of person letting the vessel for delay.

288. If the vessel is not ready, and is not in a state to receive the goods at the stipulated time, the person letting the vessel shall be liable to pay damages and interest to the freighter.

Time for sailing where affreightment is for conveyance of goods in a general ship.

289. Where the affreightment is for the conveyance of goods in a general ship, the master shall sail with the first favourable wind or on the first favourable opportunity after the expiration of the period during which it was agreed that the vessel would take in her lading, unless a further delay be agreed to by the shippers.

Right of shippers in contract for conveyance of goods in a general ship.

290. (1) If in a contract for the conveyance of goods in a general ship, the day for the sailing of the vessel is not fixed, it shall be lawful for each of the shippers to withdraw his own goods without payment of freight, on returning the bills of lading signed by the master, or giving security for such bills as may have already been forwarded, and on paying all the expenses for the loading and unloading of such goods.

(2) Nevertheless, where, in any such case, the vessel has already on board more than one-half of the cargo, the master shall sail with the first favourable wind or on the first favourable opportunity, if he is required to do so by means of a protest by the shippers representing the greater part of the cargo, and he shall so sail not later than eight days from the service of such protest; in such case no one of the shippers shall be allowed to withdraw his goods.

Where vessel is arrested through fault of freighter, etc.

291. If a vessel is arrested at the time of departure, or during the voyage, or at the place of discharge, on account of the act or negligence of the freighter or any of the shippers, such freighter or shipper shall make good to the person letting the vessel and the other shippers all damages and interest.

Where vessel is detained or delayed through fault of person letting the vessel.

292. The person letting the vessel shall be liable in damages and interest to the freighter, if, on account of the act or negligence of the former, the vessel is detained or delayed at the time of departure, or during the voyage, or at the place of discharge.

Where freighter loads forbidden goods, etc.

293. If, without the knowledge or concurrence of the person letting the vessel or of the master, the freighter or the shipper loads goods the importation or exportation of which is prohibited, or, by

any other unlawful act during the time of loading or unloading, causes injury to the vessel or to other interested parties, he is bound to make good any damages, and, even though the goods are confiscated, to pay the full freight, and to contribute towards general average, if any.

294. (1) If the master is obliged to refit the vessel in the course of the voyage, the freighter or the shipper is bound to await the carrying out of such refitting, unless he elects to withdraw his goods, in which case he must pay the full freight and contribute towards general average, saving the provisions of article 324.

Where vessel
requires refitting.

(2) If the vessel is chartered by the month, the freight shall continue to run during the time of refitting, but if the vessel is chartered by the voyage, no increase of freight may be claimed.

(3) If the vessel cannot be refitted, the master must charter another vessel or other vessels to carry the goods to the place of destination.

(4) If the master is unable to charter such other vessel or vessels at the same place or at a place nearby, freight is due in proportion to the part of the voyage performed.

(5) In the case mentioned in sub-article (4) of this article, the duty to provide for the conveyance of the goods shall devolve on the shippers severally, but the person letting the vessel shall be bound not only to inform them as to his situation, but also to take meanwhile all such steps as may be necessary for the preservation of the cargo.

295. The person letting the vessel loses his freight and is answerable for damages and interest to the freighter, if the latter proves that the vessel was unseaworthy when she sailed.

Where vessel was
unseaworthy at the
time of sailing.

296. The freighter may in the course of the voyage withdraw the whole of the goods, or a portion thereof, provided no injury or delay be caused thereby to the other freighters, and provided he pays to the master the whole freight for the goods withdrawn, as well as any contribution to general average or other indemnity which may be due, according to circumstances, saving the provisions of article 324.

When freighter
may withdraw
goods in the course
of the voyage.

297. Where, in the course of the voyage, the cargo has by reason of any peril of the sea become incapable of being carried, it shall be lawful for the freighter to withdraw it on paying the freight in proportion to the voyage performed; but if the cargo has become so incapable by its own inherent vice, the freighter must, if he withdraws the cargo, pay full freight.

Where cargo
becomes incapable
of being carried.

298. The freight on goods which the master has been compelled to sell in the course of the voyage for refitting the vessel, or for buying sails, ropes, or other apparel, or provisions, shall be payable in full, if the vessel arrives in safety, or in proportion to the voyage performed, if the vessel is wrecked.

Freight on goods
sold during
voyage.

299. The freight in respect of goods jettisoned for the common safety shall be payable by contribution as a general average.

Freight in respect
of jettisoned
goods.

No freight due for goods lost by shipwreck, etc.	300. No freight is due for goods lost by shipwreck, stranding, or any other <i>vis major</i> , and the person letting the vessel is bound to refund the freight paid to him in advance.
Freight is due where goods are saved,	301. (1) If the goods have been saved from shipwreck or other accident, freight is due to the person letting the vessel as far as the place of the accident. (2) The entire freight is due to him if he carries the goods to their place of destination.
unless saved without co-operation of master.	302. No freight is due for goods, forming part of the cargo, which may have been saved at sea or on the coast, without the co-operation of the master.
Discharge of cargo.	303. After the expiration of the period agreed upon in the contract, or fixed by law for unloading, the person letting the vessel or the master can compel the freighter or the consignee of the goods to proceed to the unloading of the vessel, and to pay the freight and average.
When person letting vessel or master may discharge and deposit goods.	304. If, the lay days having elapsed, any dispute arises with regard to the unloading of the vessel, the person letting the vessel or the master may discharge the goods, and put them on deposit in the hands of a third party, without prejudice to his right over such goods.
Master cannot detain goods on board.	305. (1) The person letting the vessel or the master cannot detain the goods on board the vessel on the plea of default of payment of the freight, the general average, and other charges. (2) Nevertheless, the person letting the vessel or the master can deposit the goods with a third party until the sum due to him is paid, and can, if such goods are perishable, demand that they be sold. (3) Where the general average cannot be immediately adjusted, it shall be lawful to demand that a judicial deposit be made of a sum to be fixed by the court.
When master loses his remedy against the freighter or shipper.	306. Where the master unloads the goods without obtaining payment of the freight, average, and other charges, or without taking such precautions as are allowed to him by the laws in force at the place of discharge, he shall forfeit his right against the freighter or the shipper, if such freighter or shipper proves that he has duly settled the amount of such freight, average, and charges with the person receiving the goods, or that he cannot, owing to the bankruptcy of such person, recover back such amount.
Where consignee refuses to receive the goods.	307. If the consignee refuses to receive the goods, the person letting the vessel or the master may demand the sale of such quantity of the goods as may be required for the payment of the freight, average and other charges, saving the right of resort to the freighters or the shippers in case of insufficiency of the proceeds.
Lien or privilege extends to average and other charges. Cap. 16.	308. (1) The special lien or privilege which, under the provisions of paragraph (c) of article 2009 of the Civil Code , is competent to the person letting the vessel or the master for the payment of the freight, extends also to average contributions and

other charges.

(2) Such lien or privilege, however, both in regard to the amount of freight, and to the average and other charges, ceases on the expiration of fifteen days from the day of the delivery of the goods, notwithstanding that such goods may have not yet passed into the hands of third parties.

309. In all cases where the freight is agreed upon by the number, measure, or weight of the goods to be carried, the person letting the vessel is entitled to demand that the goods be numbered, measured, or weighed at the time of their discharge.

When goods are to be numbered, etc.

310. In no case can the freighter or the shipper demand a reduction in the freight.

Freighter or shipper cannot demand reduction of freight.

311. The shipper cannot abandon for the freight goods which have decreased in value or deteriorated whether by their own inherent vice or by any fortuitous event. Nevertheless, if casks of wine, oil, honey, or other liquids have so leaked as to be empty or almost empty, such casks may be abandoned for the freight.

When shipper may abandon goods for freight.

Sub-title III

OF THE DISSOLUTION OF CONTRACTS OF AFFREIGHTMENT

312. (1 A contract of affreightment is dissolved *ipso jure*, without any right of the parties to the contract to claim freight or indemnity, upon the happening, before the departure of the vessel, of any of the following circumstances:

When contract of affreightment is dissolved *ipso jure*.

- (a) if the departure of the vessel is prevented by a *vis major*;
- (b) if the exportation from the place of departure of all or any of the goods included in one and the same contract of affreightment is prohibited, or if the importation thereof is prohibited at the place of destination;
- (c) if trade with the place to which the vessel is bound is interdicted.

(2) In every such case the freighter must bear the expenses of loading and discharging.

313. (1) A contract of affreightment can be dissolved upon the demand of either of the parties if, before the commencement of the voyage, a war breaks out by reason whereof the vessel or the cargo or both ceases or cease to be considered as neutral property.

Breaking out of war.

(2) If neither the vessel nor the cargo is free, the person letting the vessel and the freighter have no claim upon each other for compensation, but the expenses of loading and discharging shall be borne by the freighter.

(3) If the cargo only is not free, the freighter must pay to the person letting the vessel all the expenses necessary for fitting out the vessel, for the wages and the maintenance of the crew up to the day on which the demand for the dissolution of the contract is made, or, if the goods be already on board, up to the day of unloading.

(4) If the vessel only is not free, the expenses of loading and unloading shall be borne by the person letting the vessel.

Person letting vessel maintains unimpaired his right for demurrage and average.

314. In the cases mentioned in the last two preceding articles, the person letting the vessel maintains unimpaired his rights with regard to demurrage and to general average, if any.

If vessel is freighted for more than one place of destination, and war breaks out before the completion of the voyages.

315. If a vessel, freighted for more than one place of destination, after the completion of one voyage, happens to be in the port wherefrom she is to undertake another voyage, and a war breaks out before the commencement of such other voyage, the following rules shall be observed:

- (a) if neither the vessel nor the cargo is free -
 - the vessel shall stay in port until the conclusion of peace, or until she can sail with convoy, or in any other safe manner, or until further instructions are transmitted to the master by the owners of the vessel and of the cargo,
 - where the vessel is laden, the master may deposit the goods in a warehouse or in any other place of safe custody, until the voyage can be continued or until other measures are adopted,
 - the wages of the seamen and the expenses for the maintenance of the crew, warehouse rent and any other expense occasioned by the delay shall be borne, by way of general average, by the freighter and the person letting the vessel,
 - where the vessel is not laden, two-thirds of the expenses shall be borne by the freighter;
- (b) if the vessel only is not free -
 - the contract for the intended voyage shall be dissolved upon the demand of the person letting the vessel,
 - where the vessel is laden, the person letting her or the master shall pay the expenses for loading and unloading, and they can only claim freight in proportion to the voyages already performed, demurrage, and general average;
- (c) if the cargo only is not free, and the freighter does not otherwise effect the shipment, the master may sail without the cargo, and complete the voyage undertaken. In any such case, the person letting the vessel or the master is entitled, on completion of the voyage, to claim the whole freight, and the provisions of articles 284 and 286 shall also apply:

Provided that if the freighter is absent they shall use all due diligence to obtain a cargo from other persons.

316. (1) Where a vessel is freighted to proceed in ballast to another port, there to be laden for a voyage, the contract shall be dissolved if, when the vessel is on her way to, or has arrived at the place of loading, a war breaks out, which prevents the continuation of the voyage; and no claim to compensation shall be competent to either party, if the restraint affects the vessel alone, or both the vessel and the cargo.

Where war breaks out before, or on arrival of the vessel at the place of loading.

(2) If, on the contrary, the vessel is free, but not the cargo, the freighter shall pay half the stipulated freight.

317. If, whilst a vessel is on a voyage, trade with the country to which the vessel is proceeding is interdicted, and the vessel is obliged to return with the cargo, freight is due for the outward voyage only, even though the vessel may have been chartered "out and home".

Interdiction of trade.

318. (1) Where an embargo or any other reason of *force majeure* causes a temporary suspension of the voyage of a vessel whether before the vessel's departure or during the voyage, without any fault of the master, the owner, or the freighter, the contract shall continue to subsist, and neither party is liable for damages for delay.

Embargo.

(2) Freight shall also be due during the detention of the vessel, if the vessel is chartered by the month; but no increase is due, if the vessel is chartered for the voyage.

(3) The shipper can have his goods discharged during the detention at his own expense, on condition of re-loading them or of indemnifying the person letting the vessel or the master.

319. If the port to which the vessel is bound is blockaded, the master must, in the absence of instructions to the contrary, proceed to such one of the neighbouring ports of the same State as he may be allowed to put into.

Blockade.

320. All the rules contained in this sub-title shall apply to the contract for the conveyance of merchandise in a general ship or *à la cueillette*.

Conveyance in a general ship.

Sub-title IV

OF BILLS OF LADING

321. The bill of lading shall be signed by the master, and given to the shipper, and a duplicate shall be signed by the shipper, and given to the master.

Bill of lading.

322. (1) The bill of lading may be drawn to order or to bearer or in favour of a party named therein.

How drawn and transferred.

(2) It may be transferred by endorsement even in blank.

Parts of bill of lading.

323. The master shall give as many parts of a bill of lading as are asked for by the freighter or the shipper.

Goods cannot be withdrawn without the bills of lading.

324. (1) Freighters or shippers cannot withdraw the goods, already shipped, without returning to the master the bills of lading received in respect of such goods.

(2) If one bill of lading or more than one shall have been forwarded, it shall not be competent to the freighters or the shippers to withdraw the aforesaid goods except upon giving sufficient security in respect of any consequences which may arise from the forwarding of such bill or bills, and under the obligation, in all cases, of paying the entire freight, the expenses for discharging the goods, and those occasioned by the displacement of the remainder of the cargo, saving the provisions of article 290 and any other provision of law.

Persons between whom bill of lading is binding.

325. A bill of lading is conclusive evidence between all persons concerned in the cargo, as well as between them and the insurers, saving any proof to the contrary.

When different parts of a bill of lading are at variance.

326. If there is a variance between bills of lading of the same cargo, the one which is in the hands of the master shall be conclusive evidence if it is filled up by the shipper or his agent; and that presented by the shipper or by the consignee is conclusive evidence, if filled up by the master.

Agents or consignees to give receipt.

327. Every agent or consignee on receiving the goods specified in the bill of lading or in the contract of affreightment shall be bound to give the master a receipt for such goods, under penalty of paying all the expenses, damages, and interest, including those occasioned by the delay.

Sub-title V

OF PASSENGERS

If passenger fails to go on board at appointed time.

328. If the passenger fails to go on board, or, without the permission of the master, absents himself from the vessel at the time appointed for the departure thereof, the master shall be at liberty to sail, and may claim the entire amount of passage money.

Passenger cannot transfer his right.

329. A passenger cannot, without the consent of the master, transfer to a third party the right accruing to him from the contract.

If passenger dies before commencement of voyage.

330. (1) If the passenger dies before the commencement of the voyage, only half the passage money shall be due.

(2) Where in any such case the cost of provisions is included in the passage money agreed upon, such cost shall be deducted therefrom.

331. (1) If the vessel's voyage be interrupted or suspended, whether before the departure or in the course of the voyage, by a *vis major*, or by any cause beyond the master's control, the passenger and the master shall be released from their mutual obligations, and neither of them can claim compensation from the other.

Interruption of voyage.

(2) In the case, however, of the interruption of a voyage after the commencement thereof, the passengers shall pay passage money in proportion to the part of the voyage performed.

332. If in the case contemplated in article 294 a passenger is willing to await the refitting of the vessel, the supply of provisions during the delay shall be at the charge of the master, if he has undertaken to furnish provisions during the voyage.

Passenger entitled to provisions during delay.

333. Passengers shall obey the orders of the master in all matters concerning the preservation of order on board the vessel.

Passengers to obey master's orders.

334. The master is neither bound, nor authorized, to put into a port, or to stop during the voyage, at the request or for the benefit of a passenger.

Master not to deviate at request of passenger.

335. Passengers shall, in the absence of an agreement to the contrary, provide for their own maintenance; but the master is, when required, bound to supply to a passenger at a fair price such provisions as may be necessary.

Maintenance of passengers.

336. If a passenger dies in the course of the voyage, the master shall provide for the custody of such effects of the deceased as are found on board.

Property of deceased passenger.

337. The master shall, for the payment of the passage money and the cost of provisions, have a right of retention over the effects brought on board by a passenger, in addition to the same special privilege as is competent to the creditors mentioned in paragraph (b) of article 2009 of the [Civil Code](#).

Right of retention.

Cap. 16.

Title II

OF CONTRACTS OF LOAN ON BOTTOMRY AND AT RESPONDENTIA

Articles 338 to 360, both inclusive, repealed by: [XXXVII.1988.41](#).

Title III

OF MARINE INSURANCE

Sub-title I

OF THE CONTRACT OF MARINE INSURANCE

361. (1) Contracts of insurance must be made in writing, under pain of nullity.

Contracts of insurance to be made in writing.

(2) They may be made by a private writing, which is called a policy. No blank space shall be left in the policy.

(3) There shall be stated in the contract the date of the day on which it is signed, and whether the contract was made before or after noon.

One contract may contain several insurances.

362. (1) The same contract may contain several insurances, whether by reason of the things insured, or of the rate of the premium, or of the several insurers.

(2) Where by the same contract things, even of a different kind, shipped in the same vessel, are insured in favour of one person only, one insurance only is deemed to be made.

(3) Where the insurers are two or more, and they do not sign the contract at the same time, each of them shall, before signing, state the day and hour of the affixing of his signature.

Transfer by endorsement.

363. The policy is transferable by endorsement.

Things that may be insured.

364. (1) The insurance may be upon the hull of the vessel, whether laden or in ballast, fitted out or not fitted out, sailing alone or with others; her tackle and apparel; her equipment; her provisions; all that which may have been expended for the vessel up to the day of her departure; the sums lent on bottomry and the interest thereon; the cargo; the anticipated profits; the stipulated freight; and upon all other things capable of being estimated in money, and subject to the perils of navigation.

(2) An insurance of the vessel, without any other explanation, includes the hull, the tackle and apparel, and the equipment.

When and for what period insurance can be made.

365. (1) An insurance may be made on the whole or on a part of the above-mentioned things, jointly or separately.

(2) It may be made in time of peace or in time of war, before or during the voyage of the vessel.

(3) It may be for a voyage "out and home", or only for one of the two; for a whole voyage or for a definite period; for a determinate voyage and for a definite period jointly; for all the voyages and passages by sea, through rivers or navigable channels.

Duration of risks.

366. If both the voyage and the time are specified in the contract of insurance, the insurer shall run the risks of the entire voyage. Where the duration of the voyage exceeds the time specified, the premium shall be increased in proportion to the excess. Where the voyage is completed in less than the time specified, the premium agreed upon cannot in any way be reduced.

Goods insured on vessel unknown to the assured.

367. If the assured does not know on board of which vessel the goods are shipped, such goods can be insured as shipped on board a vessel unknown to the assured.

When nature of goods is not stated in the contract.

368. If the nature or the kind of the goods is not stated in the contract, the goods can be insured under the general description of merchandise; but such insurance shall not include gold or silver coins or ingots, or pieces of gold and silver, or diamonds, pearls, gold ware, or munitions of war.

- 369.** If the value of the thing insured is fixed in the contract in foreign money, it shall be reckoned at the value of such foreign money in Malta, according to the rate of exchange at the time of the stipulation of the contract. Goods valued in foreign money.
- 370.** If the value of the goods is not stated in the contract, such value can be proved by the invoices and the books: in the absence thereof, the goods shall be valued according to the market price at the time and place of loading, including all duties paid and charges incurred up to the time the goods have been shipped. Proof of value of goods.
- 371.** The anticipated profit is proved by means of the lists of prices current, or, in the absence thereof, by such other means as may establish the amount of profit which might have reasonably been obtained if the goods insured had reached their place of destination after a voyage without any accident. Proof of anticipated profit.
- 372.** Where by such lists of prices current or other means it is proved that, in case of safe arrival, the profit would have been less than the sum stated in the contract by the assured, the insurer is discharged on paying such lesser sum. If the goods insured would have yielded no profit, nothing shall be due by the insurer. Where profit is less than the sum declared by assured.
- 373.** (1) The amount of the freight is proved by the contract of affreightment, or by the bill of lading. Proof of amount of freight.
- (2) Failing such evidence, and in regard to goods belonging to the ship-owners themselves, the amount of the freight shall be fixed by experts.
- 374.** If the period of the risk is not stated in the contract of insurance, such risk shall commence to run and shall come to an end as provided in article 355. Period of risk.
- 375.** When goods have been insured, the period of the risk shall run without any interruption even in cases where, after the vessel had dropped anchor at an intermediate port, the master has been compelled to unload the cargo for the purpose of refitting the vessel; but the period of the risk shall end if the voyage is legally interrupted, or whenever the assured has ordered the goods not to be reshipped, or, lastly, immediately on the completion of the voyage. Period of risk in regard to goods,
- 376.** The risk in regard to an insured freight shall commence, as far as the insurer is concerned, as and when the goods contributing to the freight are shipped, and shall end on their being landed. in regard to freight,
- 377.** In regard to insurers of sums lent on bottomry, the period of the risk shall commence and end simultaneously with the beginning and the end of the risk of the lender, in terms of law, and according to such agreements as are notified to the insurer. in regard to insurers of loans on bottomry,
- 378.** The period of the risk in regard to anticipated profits shall be the same as that in regard to goods. in regard to anticipated profits.
- 379.** (1) Where an insurance has been made on anticipated profits, such profits shall be estimated separately in the contract, with an indication of the goods in regard to which such profits are anticipated. Anticipated profits to be valued separately.

(2) In case of a valuation in gross of the subject insured, with an express covenant that the surplus value shall be considered as the anticipated profits, the insurance shall only be good to the extent of the cost of the subject insured, and of such amount of anticipated profits, over and above the cost, as may be proved under articles 370 and 371.

Reinsurance.

380. (1) It shall be lawful for the insurer to reinsure with another person things which he has insured.

(2) The assured may insure the cost of the insurance.

(3) The premium of the reinsurance may be greater or less than that of the insurance.

Increase of premium on outbreak of hostilities.

381. If, after the commencement of the risks contemplated in the contract of insurance, a war breaks out, and, in consequence thereof, the subject insured is exposed to greater danger, it shall be competent to the insurer to demand an increase of the premium, and, if such increase is not agreed upon by the parties, it shall be fixed by the court, regard being had to the circumstances causing the increase of the danger.

Seaman or passenger having goods insured to deposit bill of lading.
Amended by:
XXXI.1966.2;
LVIII.1974.68;
XXIV.1995.362.

382. (1) A member of the crew or a passenger having on board the vessel in or on which he is serving or is carried, goods insured in Malta shall deposit a bill of lading in the Civil Court, First Hall, if the shipment is made in Malta; if the shipment is made outside Malta, such bill of lading shall be deposited with the diplomatic or consular representative of the Government of Malta in that port or with a person serving in a diplomatic, consular or other foreign service of any country which, by arrangement with the Government of Malta, has undertaken to represent that Government's interests in that port or with a person authorised in that behalf by the President of Malta, or, in the absence of such persons, with some trustworthy merchant being a citizen of Malta or other Commonwealth citizen, or with a local magistrate.

(2) If the goods insured belong to the master, the bill of lading shall be signed by two of the principal members of the crew, and, in case of any disaster, the master shall also be bound to prove to the insurers the purchase of such goods.

Bankruptcy of the insurer or the assured.

383. (1) If the insurer becomes bankrupt before the termination of the risk, the assured may demand either that security be given or that the contract be rescinded.

(2) The same right shall be competent to the insurer in case of bankruptcy of the assured, if the premium has not been paid to him.

When contract of insurance is null.

384. A contract of insurance is null, if made upon -

- (a) the pay or wages of members of the crew;
- (b) the premium or primage payable to the master;
- (c) vessels or goods charged, before the commencement of the voyage, with a loan on bottomry for their entire value:

Provided that if such vessels or goods are only in part charged with such loans, the contract of insurance shall be valid for the excess of their value over the sum borrowed.

385. (1) Any concealment, or any misrepresentation by the assured, or any discrepancy between the contract of insurance and the bill of lading, shall render the contract of insurance void, if such concealment, misrepresentation, or discrepancy is such as to lessen the estimate of the risk, or to change the subject-matter thereof.

Concealment or mis-representation.

(2) The insurance shall be void even if the concealment, misrepresentation, or discrepancy shall have had no effect upon the damage or loss of the things insured.

Sub-title II

OF THE RIGHTS AND OBLIGATIONS OF THE INSURER AND OF THE ASSURED

386. (1) If the voyage is abandoned, even though by the act of the assured, before the insurer has begun to run the risk, the insurance becomes void, and the assured is not bound to pay the premium, or, in case he has paid it, he shall be entitled to demand from the insurer the repayment thereof.

Where voyage is abandoned before commencement of risk.

(2) The insurer, however, shall receive, by way of compensation, one half *per centum* on the sum insured, or one half of the premium, if the whole premium does not amount to one per cent.

387. Any loss or damage which happens to the things insured by reason of stress of weather, shipwreck, stranding, fortuitous collision, compulsory deviations, or changes of voyage or vessel; or by reason of jettison, fire, capture, pillage, piracy, arrest and restraint of princes and peoples, declaration of war, reprisals; or in general by reason of any other peril of the sea, shall be at the risk of the insurer, unless the insurer shall have covenanted his exemption from one or more of such risks.

Risks borne by insurer.

388. Any voluntary deviation, or change of voyage or vessel, and any loss or damage proceeding from the act of the assured, is not at the risk of the insurer, and he shall be deemed to have earned his premium, if the time of his risk has commenced.

Voluntary deviations, etc., not to be borne by insurer.

389. (1) In the absence of an express agreement to the contrary, the insurer is in no case answerable for damages or averages proceeding directly from an inherent vice or from the nature of the subject insured.

Inherent vice of subject insured.

(2) Where an insurer is bound to pay for damages occasioned by leaking or liquefaction, the leakage or diminution to which the thing insured is ordinarily subject shall be first deducted.

Barratry.

390. (1) In the absence of an agreement to the contrary, the insurer shall not be answerable for such malversations or faults of the master or crew as are known by the name of *barratry of the master*.

(2) Any such contrary agreement is ineffectual in regard to such portion of the subject insured as belongs to the master.

(3) The insurer shall, however, be answerable for the unskilfulness of the master or crew.

Collisions.
Amended by:
XXII.1976.4.

391. (1) In cases of damage caused by a collision of vessels, the insurer shall be liable to make good the damage if the collision was accidental or was caused by the fault of the master or the crew of another vessel.

Cap. 234.

(2) Where, however, it is proved that both the vessel insured as well as the other vessel were in fault, or where it is doubtful to whose fault the collision is imputable, the damage, in cases not provided for by the Merchant Shipping Act, shall be borne in equal portions by the colliding vessels; and, in such cases, as well as in the case of a collision caused by the fault of the master or the crew of the vessel insured, the insurer is not responsible, unless he has assumed liability also for cases of *barratry of the master*.

(3) The liability of the insurer, in the cases contemplated in this article, is limited to the damage sustained by the vessel insured, and does not extend to any indemnity which, by reason of the collision, may be due by the vessel insured to the other vessel.

Pilotage dues, etc.

392. The insurer shall not be liable for ordinary pilotage and towage dues, or any other kind of dues imposed on the vessel or the goods, unless such dues have been incurred in consequence of any damage for which the insurer is liable.

Clause "free from average".

393. Where the insurance is contracted with the clause "free from average", the insurer is not answerable for any average, whether general or particular, except in cases which give rise to an abandonment.

Clause "free from hostilities".

394. (1) Where the insurance is contracted with the clause "free from hostilities", the insurer shall be discharged from all liability if the goods perish or are damaged by reason of any violence, capture, pillage, arrest and restraint of princes and peoples, declaration of war, or reprisal.

(2) The contract of insurance shall cease as soon as the subject insured suffers any delay, or the course of the voyage is altered, by reason of hostilities.

(3) Nevertheless, the insurer shall not on such account be discharged from the obligation of making good any damage sustained before the commencement of hostilities.

Vessel, etc.,
detained in port by
hostile force.

395. Where any vessel or goods insured "free from hostilities" are, by hostile force, taken or detained in any port, such vessel or goods shall be deemed to be captures at sea, and the risk of the insurer shall cease.

396. Where the insurance is made separately on goods which are to be shipped on two or more vessels specified in the contract, with a statement of the amount insured on each vessel, and where the whole of such goods is shipped on one vessel or on a smaller number of vessels than that stated in the contract, the insurer is only liable for the amount which he has assured on the vessel or vessels receiving the goods, notwithstanding the loss of all the vessels so specified; and shall, nevertheless, be entitled to one half *per centum* on the amounts the insurances whereof have thus become void.

Insurance on goods to be shipped on two or more vessels.

397. (1) The insurer's risk ceases, and he shall be entitled to the premium, if the assured sends the vessel to a more distant port than that stated in the contract, even though it be in the same course.

Where voyage is prolonged or shortened.

(2) The insurance shall have its full effect if the voyage is shortened.

398. (1) The assured is bound to communicate without delay to the insurer any information which he receives concerning the loss of the subject insured, and to furnish the insurers, if required, with copies or extracts of any document conveying such information.

Assured to give notice of disaster to insurer.

(2) Otherwise, he shall bear the damages and costs.

399. Unless and until the assured shall exercise the right of abandonment competent to him, he is bound to use his best endeavours for the preservation or recovery of the subject insured.

Assured to endeavour to preserve or recover thing insured.

400. In case of an insurance on a loan on bottomry, the insurer, in the absence of an agreement to the contrary, shall not be responsible for any fraud on the part of the borrower.

Insurer of loan on bottomry not liable for fraud of borrower.

401. Where the things insured are not dispatched, or only a part thereof is dispatched, the insurer shall receive one half *per centum*, or one half of the premium, according to the provisions of article 386, on the sum insured or on the sum exceeding the value of the goods dispatched, as the case may be.

If things insured are not dispatched.

402. A person effecting an insurance on behalf of another person without disclosing the name of the latter, shall not be entitled to recover the premium if such other person fails to dispatch the goods insured, or dispatches only a part thereof.

Where undisclosed principal fails to dispatch goods.

403. (1) An insurance effected for an amount exceeding the value of the subject insured is void as regards the assured only, if fraud or deceit on his part be proved.

Insurance for an amount over or under the real value.

(2) If no fraud or deceit is proved, the insurance is valid up to the value of the subject insured, and, in regard to the excess, the insurers shall receive one half *per centum*, or one half of the premium, according to the provisions of article 386.

(3) An agreement that the insurer shall be answerable for the whole amount stated in the contract, independently of the value of the subject insured, is valid.

(4) Where the insurance is effected for a value less than the real value, the insurer shall only be liable in proportion to the value stated.

Several contracts of insurance of the same subject.

404. (1) Where there are several contracts of insurance effected without fraud on the same subject, and the first contract covers the entire value thereof, such first contract only shall hold good.

(2) The insurers who have signed the subsequent contracts shall be discharged, and shall only receive one half *per centum* on the sum insured, or one half of the premium, according to the provisions of article 386.

(3) If the entire value of the goods loaded is not covered by the first contract, the insurers who have signed the subsequent contracts shall be answerable for the remaining value, according to the order of the date of the contracts.

If there are goods on board to the full amount of the several insurances made.

405. If there be goods on board to the full amount of the sums insured, and a portion of such goods is lost, the loss shall be borne by all the insurers of such goods ratably in proportion to their respective interest.

If master is allowed to touch at different ports.

406. If the master is allowed to touch at different ports for the purpose of completing or changing his cargo, the insurer runs the risks of the goods insured, as provided in article 355.

Return of premium in case of nullity of contract,

407. In case of total or partial nullity of the contract of insurance, the insurer shall, provided the assured has acted in good faith, return the premium or, as the case may be, such proportionate part thereof as corresponds to the amount received by him in respect of risks which did not attach, deducting one-half *per centum*, or one-half of the premium as provided in article 386.

except in case of fraud, etc., of assured.

408. If the contract is avoided by reason of any deceit, fraud, or bad faith on the part of the assured, the insurer is not bound to return the premium.

Insurance is null where insurer is aware of safe arrival of vessel, etc.

409. Where an insurance is effected on vessels or goods which, at the time of the stipulation of the contract of insurance, had already reached their place of destination, or had sustained a disaster, such insurance is void, if it is proved, or can be presumed that, at the time of the signing of the contract, the insurer was aware of the arrival of the subject insured, or, as the case may be, the assured was aware of the happening of the disaster.

Facts which give rise to presumption of knowledge of arrival or loss.

410. Such presumption shall be deemed to exist whensoever, reckoning at the rate of four miles to the hour, or whensoever, regard being had to the means of communication or other circumstances, it is shown that the information relating to the arrival or loss of the vessel, from the place of such arrival or loss, or from the place whence such information first came, could have reached the place where the contract was made, before the signing of the same.

Other facts giving rise to such presumption.

411. Such presumption shall also be deemed to exist whensoever, before the signing of the contract of insurance, any

vessel shall have come to the place where the contract was made, from the place of the arrival or loss, or from the place whence information of such arrival or loss first came, provided such vessel shall have sailed from the said place after the arrival or loss.

412. (1) The presumption mentioned in the last preceding article shall not arise if the insurance is effected under the clause "good or bad news", or any other like clause.

Clause "good or bad news".

(2) In such case the insurance cannot be avoided, unless it is proved that the insurer was aware of the arrival, or the insured of the loss, before the signing of the contract.

Sub-title III

OF ABANDONMENT

413. (1) The things insured may be abandoned in the following cases:

Cases in which abandonment can be made.

- (a) shipwreck;
- (b) stranding or running aground with partial wreck;
- (c) unseaworthiness occasioned by a peril of the sea;
- (d) forced abandonment;
- (e) capture;
- (f) arrest and restraint of princes and peoples;
- (g) loss or deterioration of the things insured amounting to at least three-fourths of their value.

(2) Any other damage shall be deemed to be an average loss, and shall be settled between the insurer and the assured in accordance with their agreements, and according to their respective interest.

414. The sale of the goods in consequence of a peril of the sea, during the voyage and before the arrival of such goods at the place of destination, is deemed to be a case of loss which authorises the abandonment, whatever the proceeds of such sale may be.

When sale of goods gives rise to abandonment.

415. Where it is necessary to ascertain whether there is deterioration or loss corresponding to three-fourths of the value of the goods insured, the damages which arise from general average contributions are not taken into consideration. The expenses relating to the sale of the said goods, and the expenses of the acts preparatory to the sale are, however, taken into consideration.

Contributions to general average not considered in establishing value of loss or deterioration.

416. (1) In cases where the things insured may be abandoned, the assured may elect either to make the abandonment or to bring an action for average.

Assured may sue for abandonment or for average.

(2) It shall not be lawful for the assured, after having elected to bring an action for average, to waive such action, and bring an

action for abandonment. He may, however, waive the abandonment, if not yet accepted by the insurers, and bring an action for average.

No abandonment before risk attaches.

417. It shall not be lawful to make an abandonment before the risk insured against has attached.

Abandonment cannot be conditional or partial.

418. The abandonment of the subject insured cannot be partial or conditional. It extends only to the property which is the subject of the insurance and of the risk.

Time within which abandonment is to be made.

419. (1) An abandonment to the insurer must be made within the time following:

- (a) six months from the day on which information of the disaster is received, if it has happened on the coasts of Europe, or on those of Asia or of Africa in the Mediterranean, or, in the case of capture, from the day on which information is received that the prize was carried into any of the ports or places situated on the above-mentioned coasts;
- (b) eighteen months to run from the aforesaid days respectively, if the disaster happened in, or the prize was conveyed to any other part of the world.

(2) When the said times have expired, it shall not be competent to the assured to make the abandonment.

Assured to give notice to insurer.

420. (1) In every case in which the right to abandon is competent, and in case of any other peril the risk whereof is to be borne by the insurer, the assured must give notice to the insurer of any information which he may have received thereon.

(2) Such notice shall be given without delay under pain of damages and interest.

When lapse of time gives right to abandonment without necessity of proving loss.

421. (1) If, upon the expiration of one year from the day of the vessel's departure, or from the day to which the last news of the vessel relates, in the case of ordinary voyages, or upon the expiration of two years, in the case of long voyages, the assured declares that he has received no news of the vessel, he shall be entitled to abandon, and to claim payment of the sum insured without any necessity of proving the loss of the vessel.

(2) Upon the expiration of the aforesaid times of one year or of two years, the assured shall be allowed, for the purpose of commencing proceedings, the times fixed in article 419.

When loss is presumed to have happened in the case of "time policies".

422. (1) In the case of an insurance effected for a fixed period of time, when the times mentioned in the last preceding article have elapsed, the loss of the vessel shall be presumed to have happened within the period of the insurance.

(2) If there are several successive insurances for a fixed period of time, the loss is presumed to have happened within the period of the first insurance; or, in case of news received as contemplated in the last preceding article, within the period of that particular insurance to which the date of the last news corresponds.

- 423.** Long voyages are those having for their destination any coast or country situated beyond the Straits of Gibraltar, excepting the European sea coast as far as the Sound, the African sea coast as far as Cape Verde, the Baltic Sea, the British Isles, the Madeiras and the Canary Islands.
- 424.** The assured may, by means of the notice mentioned in article 420, either abandon, and claim from the insurer payment of the sum assured within the time fixed in the contract, or reserve his right to abandon within the times fixed by law.
- 425.** The assured shall, when making the abandonment, state all the insurances made, or caused to be made, or ordered by him, and the sums of money borrowed on bottomry or *at respondentia*. In default of so doing, the time for payment, which is to run from the day of the abandonment, shall be suspended until the day on which the assured shall make and notify such statement, but the period prescribed for making the abandonment shall not be enlarged thereby.
- 426.** If the statement be fraudulent, the assured shall be deprived of the benefits of the insurance, and shall be bound to pay the sums borrowed on bottomry or *at respondentia*, notwithstanding the loss or the capture of the vessel.
- 427.** (1) In case of shipwreck or stranding with partial wreck, the assured is bound to labour for the recovery of the things insured, without prejudice to the abandonment to be made in due time and at the proper place.
- (2) The assured is entitled to the reimbursement of the expenses for recovery up to the value of the things recovered.
- 428.** (1) If the time for payment is not stated in the contract, the insurer shall pay the sum insured four months after the notice of the abandonment.
- (2) After the expiration of such time, the insurer shall also pay interest at the legal rate. The things abandoned shall be charged with the payment.
- 429.** The insurer cannot be sued for the payment of the sums insured before the documents proving the shipment and the loss of the goods insured are notified to him.
- 430.** (1) Where, in the opinion of the court, the defence of the insurers is such as to require a separate trial, the court shall order the insurers to make provisional payment to the assured of the sum insured, subject to the obligation of the assured to give security.
- (2) Such security shall cease to be binding on the expiration of two years, if within such time no action shall have been brought by the insurers.
- 431.** Where an abandonment has been notified and accepted, or adjudged valid, the property in the thing insured vests in the insurer from the day of the abandonment, and the insurer cannot, under the excuse of the vessel's return, avoid payment of the sum insured.

Definition of "long voyages".

Assured may abandon at once or reserve his right to do so.

Statement to be made by assured in making abandonment.

Consequences of fraudulent statement.

Duty of insured in case of shipwreck, etc.

When sum insured is to be paid.

Insurer cannot be sued before proof of shipment and loss is furnished to him.

When court is to order provisional payment.

Effect of abandonment.

Abandonment of ship to include freight of things saved.

432. The freight of goods saved, even if paid in advance, is included in the abandonment of the vessel, and becomes likewise the property of the insurer, without prejudice to the rights of the lenders on bottomry, or of the seamen for their wages, or of other parties for the recovery of the expenses incurred during the voyage.

Arrest and restraint of princes and peoples.

433. (1) In the case of arrest and restraint of princes and peoples, the assured shall, without delay, give notice to the insurer of the information received.

(2) The abandonment of the property arrested cannot be made until after six months from the day of such notice, if the arrest is effected in the Mediterranean or other European sea; or until after one year, if the arrest is effected in a more distant place.

(3) Such times shall commence to run from the day of the notice of the arrest. Where the goods arrested are of a perishable nature, the aforesaid times shall be reduced to two months in the former case, and to three months in the latter case.

Assured to endeavour to secure release of goods arrested.

434. (1) During the running of the times fixed in the last preceding article, the assured is bound to use all due diligence to obtain the release of the goods arrested.

(2) The insurers on their part may, either in concert with the assured or separately, endeavour to secure such release.

Abandonment on the ground of unseaworthiness.

435. An abandonment on the ground of unseaworthiness cannot be made if the vessel can be repaired and made fit to continue the voyage to her place of destination, unless the expense of refitting the vessel is such as to exceed three-fourths of the value thereof, saving the right of action of the assured against the insurers for the recovery of the amount of the expenses incurred and the average sustained.

Notice to be given to insurers of cargo.

436. Where the vessel has been declared unfit for navigation, the party whose goods have been insured is bound to give without delay notice to the insurer of the information received.

Master to procure another vessel.

437. The master is bound in such case to use all due diligence to procure another vessel to carry the goods to their place of destination.

Risks in case of reshipment.

438. The insurer shall run the risks of the goods reshipped on another vessel, in the case referred to in the last preceding article, up to the time of the arrival and discharge of such goods.

Charges for which insurer is liable.

439. The insurer shall moreover be liable for all averages and all expenses incurred for the unloading, storage and safe keeping in warehouses, and reshipment of the goods, for any excess of freight, and for any other expense incurred in saving the goods, to the extent of the sum insured.

If master fails to reship goods within two months, the assured may make abandonment.

440. If within the time of two months the master is unable to procure another vessel for the reshipment of the goods and the carriage thereof to the place of destination, it shall be lawful for the assured to abandon the goods.

Title IV

OF AVERAGE AND OF JETTISON AND AVERAGE CONTRIBUTION

Sub-title I

OF AVERAGE

441. Every extraordinary expenditure made on behalf of the vessel or of the cargo, or of both, and every damage sustained by the vessel or the cargo from the time of the loading or the sailing up to the time of the return or discharge, fall under the description of average.

Average.

442. Failing special agreements between all the parties, averages are regulated in accordance with the following provisions.

Rules to be observed in the absence of special agreements.

443. There are two kinds of average: gross or general average, and simple or particular average.

General or particular average.

444. The following are general averages:

General averages.

- (a) goods thrown overboard for the common safety, or for the benefit of the vessel and the cargo jointly;
- (b) cables, masts, sails, and other rigging, cut away or broken for the said purpose;
- (c) anchors, cordage or other things abandoned for the said purpose;
- (d) any damage done by jettison to goods remaining on board;
- (e) any damage voluntarily done to the vessel in order to facilitate the jettison, to lighten the vessel, or to save the goods, or in order to facilitate the running out of the water; and any damage sustained by the cargo from these causes;
- (f) the maintenance of the seamen during the carrying out of the repairs of the damage voluntarily sustained for the common safety;
- (g) the expenses of unloading in order to lighten the vessel, and of putting into any port or other place, when the vessel is compelled to do so by stress of weather, pursuit of enemies or pirates, or any other cause for the safety of the vessel and the cargo;
- (h) any damage caused to the vessel or to the cargo, or to both, if the vessel is voluntarily run ashore to avoid her capture or loss, or to save the vessel or the cargo from any other imminent peril; the expenses and wages for getting the vessel afloat; and the salvage payable for extraordinary services to avoid loss or capture in the aforesaid cases;
- (i) generally, any damage voluntarily sustained in cases of danger, and all expenses incurred, for the common

benefit and preservation of the vessel and of the goods, from the time of loading and sailing, up to the time of the return and discharge.

Things which contribute towards general average.

445. The goods, the vessel according to her condition at the time of her arrival, and the clear amount of the freight after deducting the wages of the seamen, their maintenance, and other expenses of the voyage, shall each and all contribute in proportion to their respective values or amounts, towards general average.

How price of goods is fixed.

446. The price of the goods shall be fixed according to their value at the place of discharge.

Particular averages.

447. The following are particular averages:

- (a) any damage sustained by the goods through inherent defects, or by reason of stress of weather, capture, shipwreck, or stranding;
- (b) expenses incurred to save the goods;
- (c) the loss of cables, anchors, sails, masts, or cordage, occasioned by stress of weather or other marine accident; the expenses of putting into any place owing to the fortuitous loss of the said things, or to the necessity of victualling the vessel, or for the purpose of repairing her in case of leakage;
- (d) the wages and maintenance of the seamen during the refitting of the vessel for any of the causes mentioned in this article;
- (e) the wages and maintenance of seamen during quarantine; and
- (f) generally, all expenses incurred for and any damage sustained by the vessel alone, or the goods alone, from the time of the loading and sailing to that of the return and discharge, whenever such expenses and damage were not incurred or caused voluntarily, and for the common safety of the vessel and cargo.

By whom particular averages are borne.

448. Particular averages are borne and paid by the owner of the thing which has sustained the damage or occasioned the expense.

Damage to goods occasioned by negligence of master or crew.

449. (1) Any damage sustained by the goods by reason of the master having neglected to secure the hatches, to moor the vessel, or to provide good cables, or by reason of any other accident occasioned by the neglect of the master or the crew, are likewise particular averages to be borne by the owner of such goods; but for any such damage the owner has a remedy against the master, the vessel and the freight.

(2) Any damage which the owners of the vessel sustain through an unnecessary and unreasonably long stay in port shall be made good by the master.

Expenses for pilotage, towage, etc., are not averages.

450. Pilotage and towage dues in order to put into or sail from any port or place, the expenses relating to sea-protests, tonnage and other navigation dues, are not averages but simple charges on the

vessel, saving the provisions of paragraph (g) of article 444.

451. No action for general average can be brought if such average does not exceed one *per centum* of the joint value of the vessel and cargo, and no action for particular average can be brought if such average does not exceed one *per centum* of the value of the thing damaged.

When action for average loss is not maintainable.

Sub-title II

OF JETTISON AND AVERAGE CONTRIBUTION

452. (1) If by reason of stress of weather or the pursuit of an enemy, the master deems it his duty, for the safety of the vessel, to throw anything overboard, or to cut away the masts, or to abandon the anchors, he is bound to consult the parties interested who may be on board the vessel and the principal members of the crew.

Jettison.

(2) If there is a difference of opinion, the opinion of the master shall prevail.

453. The things least useful, the heaviest, and the least valuable, shall be the first to be thrown overboard.

Things to be thrown first.

454. (1) The master shall, as soon as possible, draw up a statement of the deliberation as to the jettison.

Deliberation to be reduced into writing.

(2) The statement shall indicate the grounds on which it was decided to make the jettison, and shall mention the goods thrown overboard or damaged; it shall include the names of those who agreed and of those who disagreed with the master; and it shall be copied in the log-book.

455. The statement of the losses and damage shall be made at the place of discharge of the vessel.

Statement of losses and damage.

456. Goods thrown overboard shall be valued according to the market price at the place of discharge; their nature and quality shall be proved chiefly by the bills of lading and invoices, if any.

How things thrown overboard are valued.

457. The apportionment of the losses and damages shall be made on the goods thrown overboard and on those saved, on the vessel and on the freight, in proportion to their value at the place of discharge.

Adjustment of average loss.

458. (1) In cases where the quality of the goods has not been truly described in the bill of lading, if the goods are found to be of greater value than that stated, they shall, if saved, contribute according to their valuation; but, if lost, they shall be paid for according to the quality as stated in the bill of lading.

Where quality of goods is not truly stated.

(2) If the goods are found to be of an inferior quality to that stated in the bill of lading, they shall, if saved, contribute on the basis of the quality shown in the bill of lading, but, if jettisoned or damaged, they shall be paid for according to their value.

Ammunition, victuals, etc., do not contribute to general average.	459. (1) Ammunition, victuals, the effects of the crew, and the wearing apparel of the passengers do not contribute to general average. (2) The value of such things, however, if they are jettisoned, shall be paid for by a contribution on all the other things.
Goods for which there is no bill of lading.	460. Goods for which there is no bill of lading, nor a declaration of the master, are not paid for, if jettisoned, but shall contribute, if saved.
Deck-cargo.	461. (1) Goods carried on deck shall contribute, if saved; if they are jettisoned, or damaged by the jettison, no claim for contribution can be made by the owner thereof, who shall, however, have a right of recourse against the master, where the latter is liable according to law. (2) The provisions of this article shall not apply in the case of voyages between Malta and Sicily, or between Malta and Tripoli or Tunis, or in the case of goods which it is customary to carry on deck.
Where jettison does not save vessel.	462. If the jettison does not save the vessel, there shall be no contribution, and the goods which have not been jettisoned, and which have been saved, shall not be liable to pay for the things jettisoned, or to make good the damage sustained by other goods.
Where the vessel is saved by the jettison, but is afterwards lost.	463. If the jettison saves the vessel and if, in prosecuting her voyage, she should be afterwards lost, the effects saved shall contribute towards the jettison, according to their value in the condition in which they may be found, after deducting salvage expenses.
Damage sustained after the jettison.	464. (1) Goods jettisoned do not, in any case, contribute to the payment for any damage which the goods saved sustain after the jettison. (2) The cargo does not contribute to the payment of the vessel which is lost or has become unseaworthy, except in the cases mentioned in article 444.
Goods contribute to repair of vessel damaged for saving them.	465. Where the vessel has been cut open to extract the goods, such goods shall contribute to the repair of the damage caused to the vessel.
No contribution by goods put into boats.	466. Where the vessel is lost with the remainder of the cargo, there shall be no claim for contribution against goods put into boats to lighten the vessel, even though such goods arrive in safety.
Where goods jettisoned are recovered.	467. Where, after the apportionment of the contribution, the goods jettisoned are recovered by their owners, such owners must return to the master and to the interested parties what they received out of the contribution, deducting the damages caused by the jettison, and the expenses of recovering the goods.
Owner of goods not to contribute beyond value thereof.	468. The owner of the goods can in no case be called upon to contribute to general average beyond the value of the goods at the time of their arrival.

Title VOF PRIVILEGED DEBTS ON SHIPS AND OTHER SEA-GOING
VESSELS

Articles 469 to 476, both inclusive, repealed by: [XXXVII.1988.41](#).

PART III
OF BANKRUPTCY

Title I
OF THE DECLARATION OF BANKRUPTCY

*Substituted by:
[XXIII.2022.5](#).*

477. (1) Every trader who, having regard also to his contingent and prospective liabilities, is unable to pay his commercial debts, shall suspend the payment of all his debts, and shall, upon the suspension thereof, be in a state of bankruptcy.

State of
bankruptcy.

(2) Without prejudice to the provisions of sub-article (1), if a commercial debt due by the trader has remained unsatisfied in whole or in part after twenty-four (24) weeks from the enforcement of an executive title against the trader by any of the executive acts specified in article 273 of the [Code of Organization and Civil Procedure](#), the trader shall suspend the payment of all his debts and be deemed to be in a state of bankruptcy.

Cap. 12.

(3) For the purposes of this Part, the term "trader" shall, in addition to the persons referred to in article 4, also include any other natural or legal person, in respect of commercial debts for which such person is, or becomes, liable, whether as principal debtor or otherwise.

(4) In this Part, unless the context otherwise requires, the following expressions have the meaning hereby assigned to them:

(a) "commercial debt" means any liability incurred by any person, whether as principal debtor or otherwise, insofar as that liability was incurred, or otherwise arises as a result of any liability which was originally incurred in the course of, in connection with, or for the purposes of, the exercise of any trade, business, craft or profession by the original debtor, and any other liabilities as the Minister responsible for the Malta Business Registry may, by regulations prescribe;

(b) "personal debt" means any liability incurred by any person, whether as principal debtor or otherwise, which is not a commercial debt;

(c) "debt", when used alone, means any liability incurred by any person, whether as principal debtor or otherwise, and whether a commercial debt or a personal debt; and

(d) "competent authority" means the same as the definition assigned to it in the Insolvency Practitioners Act.

Cap. 632.

(5) A debt falling under sub-article (4)(a), which is not exclusively incurred in the pursuit of the activities described in sub-article (4)(a), shall, for the purposes of this Part, be treated as a commercial debt to the extent of that part of the debt which has been incurred, or which has arisen as a result of the activities provided for in sub-article (4)(a), and the term "commercial debt" shall, for the purposes of this Part, be read and construed accordingly.

(6) Any transfer of assets, payment of debts, or act of trade made by a trader who is in a state of bankruptcy, and which are made between the date of the suspension of payments and the date of the judgment declaring bankruptcy, shall, unless a determination is made by the court in accordance with article 482(3) that the debtor is not in a state of bankruptcy, be null and void.

Declaration in court.

478. Upon the suspension of payments, every trader shall, without undue delay, file a declaration of bankruptcy in the Civil Court (Commercial Section).

Contents of the declaration of bankruptcy.

479. (1) The declaration of bankruptcy filed by the trader must be confirmed on oath and include the following:

(a) the trader's name and his identification or registration number;

(b) the nature of the trade, business, craft or profession, in respect of which the debts have been incurred;

(c) the name, identification or registration number, and other particulars of each of the trader's creditors together with their registered address or, in the absence of a registered address, the address of their place of business or place of residence;

(d) the value and nature of the trader's debts, both commercial and personal, and the security, if any, enjoyed by the respective creditors; and

(e) such other information as the Minister may, by notice, prescribe.

(2) In case of the bankruptcy of a legal person, the declaration must also include the name and the place of residence of each of the natural persons jointly and severally liable for the debts of the legal

person.

480. On making the declaration mentioned in the foregoing articles, the trader shall, at the same time, file in the Civil Court (Commercial Section), all his commercial books, records and other papers:

Production of books.

Provided that, where the trader is not a person bound to keep trade books in terms of article 13, it shall be sufficient for such person to file in the Civil Court (Commercial Section), all information and documentation as may be necessary to ascertain the circumstances in which the respective debts were incurred, together with a statement of the financial position of the person at the time listing all assets and liabilities of such person.

481. (1) Any creditor may, whether the debt owing to him is a commercial debt or otherwise, and even though such debt has not yet fallen due, proceed summarily before the Civil Court (Commercial Section), against a trader who is his debtor, or his lawful representative, demanding a declaration that such trader is in a state of bankruptcy.

Declaration of bankruptcy on demand of creditor.

(2) A declaration of bankruptcy may not be sought by a child against their parent, or by a parent against their child, or by one spouse against the other.

Declaration may not be sought by child against parent or vice versa, etc.

(3) The bankruptcy of a trader, being a natural person, may be declared after his death, if prior to his death he had suspended payments; in such case the declaration of bankruptcy cannot be demanded by the creditors except within three (3) months from the death of the debtor.

When declaration may be sought after death of trader.

(4) In the case of a demand for a declaration of bankruptcy as provided in this article, the creditor making the demand shall, simultaneously with the demand, give security in an amount that shall be equivalent to the greater of ten percent (10%) of the debt owing to such creditor, or one thousand euro (€1,000) in favour of the party against whom the demand is made, for the due prosecution of the case without delay and the substantiation of his claim; in default whereof, the court may order the amount of the security to be paid, in whole or in part, to the party in whose favour such security has been given:

Creditor demanding adjudication of bankruptcy to give security.

Provided that such payment shall not operate as a bar to an action against the creditor for damages and interest arising from such proceedings.

482. (1) Where a declaration of bankruptcy has been filed in terms of article 479, the registrar shall, by notice, call upon the creditors mentioned in the declaration to appear before the Civil Court (Commercial Section), on such date, and at such a time, as shall be specified in the relevant notice, being a date not later than thirty (30) days from the date on which the declaration is made, to show cause why their debtor should not be declared to be in a state

Summoning of creditors.

of bankruptcy, and to make representations concerning the appointment by the court of a bankruptcy trustee. The registrar shall cause the notice to be served on the creditors mentioned in the declaration, and for the notice together with the declaration to be published by means of a notice containing an abstract in the Gazette and in one (1) or more daily newspapers.

(2) Where a declaration of bankruptcy is demanded in terms of article 481, the registrar shall, by notice, call upon the debtor mentioned in the declaration to appear before the Civil Court (Commercial Section), on such date, and at such a time, as shall be specified in the relevant notice, being a date not be later than thirty (30) days from the date on which the declaration is demanded, to show cause why he should not be declared to be in a state of bankruptcy. The registrar shall cause the notice to be served on the creditor making the demand, and for the notice together with the declaration to be published by means of a notice containing an abstract in the Gazette and in one (1) or more daily newspapers, calling upon interested persons to show cause why the debtor should not be declared to be in a state of bankruptcy, and to make representations concerning the appointment by the court of a bankruptcy trustee.

(3) Where the court, during the proceedings referred to above, is satisfied that cause has been shown why the debtor should not be declared to be in a state of bankruptcy, the court shall, by judgment, declare that the debtor is not in a state of bankruptcy and shall award costs against the party cast. The court shall also order that an abstract of the judgment be published, by means of a notice in the Gazette.

(4) Where the court, during the proceedings referred to above, is satisfied that cause has been shown why the debtor should be declared to be in a state of bankruptcy, the court shall deliver a judgment declaring the bankruptcy.

(5) In the event that the court is of the view that the declaration of bankruptcy made by the debtor in terms of article 479, or the declaration of bankruptcy demanded by the creditor in terms of article 481, is frivolous or vexatious, the court may award double costs against the party cast.

Suing out of acts
and proceedings.

483. (1) If the creditor on whose demand the bankruptcy has been declared neglects to sue out, at his own expense, such acts and proceedings as are necessary to arrive at the making of a bankruptcy order, any other creditor, or even the bankrupt himself, may proceed to sue out such acts or proceedings.

Reimburse-ment of
expenses incurred
by the creditor.

(2) Subject to the provisions of article 499, all necessary expenses incurred during bankruptcy proceedings shall be repaid to the creditor disbursing them, out of moneys received on account of the bankruptcy estate in preference to any other debt.

Stay of claims.

484. (1) The execution of claims of a monetary nature against

the bankrupt or the bankruptcy estate shall be stayed in respect of all debts referred to in article 487 upon the delivery of the judgment declaring bankruptcy.

(2) The stay of the execution of claims as provided for in sub-article (1) shall cease with regard to the bankrupt, upon the rehabilitation of the bankrupt in terms of articles 524(1)(b) or 534(1)(b), as the case may be.

485. Every act transferring property, whether corporeal or incorporeal, including any renunciation of any succession or of an acquired prescription, and every obligation incurred, or other act made by the bankrupt which defrauds his creditors, shall be null and void, even though the parties interested have acted, and, or are in good faith.

Acts in fraud of creditors are void or voidable.

486. (1) Upon the appointment of a bankruptcy trustee in accordance with article 488, the bankrupt shall *be ipso jure* relieved of his existing title to all assets other than those assets referred to in article 492, whether corporeal or incorporeal, and whether relating to his business or not. The ownership of such assets shall, by operation of law, devolve upon and vest in the bankruptcy trustee who shall receive and hold such assets for the benefit of the body of creditors. All debts, including the debts referred to in article 487, shall, by operation of law, become due and payable by the bankruptcy estate as vested in the bankruptcy trustee:

The bankrupt is relieved of ownership of property.

Provided that, notwithstanding anything stated in any other law, no charge, levy or other dues shall become payable in Malta by way of tax, duty or other government tariff or levy, notwithstanding the manner in which it is described, upon, or as a result of the transfers contemplated in terms of this article.

(2) Everything that devolves on the bankrupt after the bankruptcy but prior to the occurrence of the events referred to in articles 524(1) or 534(1), as the case may be, shall, by operation of law, when and as the same so devolves, vest in the bankruptcy trustee who shall receive and hold the thing for the benefit of the body of creditors:

Provided that, notwithstanding anything stated in any other law, no charge, levy or other dues shall become payable in Malta by way of tax, duty or other government tariff or levy, notwithstanding the manner in which it is described, upon, or as a result of the transfer contemplated in terms of this article.

(3) Any assets that shall devolve upon the bankruptcy trustee by operation of sub-articles (1) and (2) shall be received by the bankruptcy trustee subject to any third-party rights, whether real or personal, in existence at the time, which rights shall be preserved and shall not be prejudiced thereby.

Debts owing by bankrupt not yet due, become payable on declaration of bankruptcy.

487. Debts owing by the bankrupt which have not fallen due, even if privileged, secured by pledge or hypothecary, shall become payable upon the judgment of the court declaring the bankruptcy.

Substituted by:
[XXIII.2022.6.](#)

Title II

OF THE RIGHTS AND DUTIES OF THE BANKRUPTCY TRUSTEE

Appointment of bankruptcy trustee.

488. (1) The court shall, in the judgment declaring bankruptcy, appoint one (1) or more persons as the bankruptcy trustee to exercise the functions assigned to the bankruptcy trustee under this Part:

Provided that, where more than one (1) person is appointed as the bankruptcy trustee, the persons so appointed shall be appointed to act jointly as the bankruptcy trustee and they shall be jointly responsible for the exercise of the functions assigned to the bankruptcy trustee under this Part.

(2) The bankruptcy trustee shall be deemed to be an officer of the court, and as such shall be subject to the orders of the same.

(3) In the event of the death, interdiction, incapacitation or resignation of the bankruptcy trustee or any one (1) or more of the persons so appointed, the court shall, at the instance of any interested person or on its own motion, release the said person or persons of their appointment. The court shall appoint one (1) or more other persons as the substitute bankruptcy trustee, and immediately upon the appointment being made, the provisions of articles 486, 489 and 490 shall apply *mutatis mutandis* to the substitute bankruptcy trustee.

(4) Any interested party may, within twenty (20) days from the publication of the notice referred to in article 490, apply to the court for the substitution of the bankruptcy trustee on the basis that the latter is not fit and proper, whether due to the subsistence of a conflict of interest or for any other valid reason.

Authorisation of bankruptcy trustee.

489. The bankruptcy trustee appointed by the court shall be a person duly authorised to act as such, in terms of article 4 of the [Insolvency Practitioners Act](#) and whom the court deems fit to faithfully discharge the duties of his office.

Cap. 632.

Publication of abstract of judgment in Gazette.

490. (1) The bankruptcy trustee shall, within fourteen (14) days from the judgment declaring bankruptcy, notify the competent authority and the registrar of the said judgment, and cause a notice containing an abstract of the judgment to be published in the Gazette and in one (1) or more newspapers, which notice shall clearly indicate the name, surname and business address of the person or persons appointed as the bankruptcy trustee.

(2) An abstract of the judgment declaring the bankruptcy shall also be enrolled in the Public Registry within fourteen (14) days from the judgment.

491. (1) The court may, at any stage of the proceedings, of its own motion or upon the demand of one (1) or more creditors or of the bankrupt, remove the bankruptcy trustee.

Removal of
bankruptcy
trustees.

(2) No appeal shall lie against the pronouncement of the court made in terms of sub-article (1).

(3) Upon the removal of the bankruptcy trustee by the court, the court shall appoint a substitute bankruptcy trustee and the provisions of article 488 shall apply *mutatis mutandis*.

492. Where the bankrupt is a natural person, the bankrupt shall be entitled to retain the use, possession and ownership of any property that, as the bankrupt may reasonably demonstrate to the satisfaction of the bankruptcy trustee, comprises:

Property which
may be retained by
the bankrupt.

(a) the bankrupt's main residence;

(b) any vehicle, tools, or equipment of the bankrupt, insofar as the bankrupt may reasonably demonstrate these to be necessary for the performance, by him, of an activity permissible in terms of article 498(3);

(c) any apparel and other movable effects necessary for the personal use of the bankrupt or that of any person related to him by consanguinity or affinity to the third degree inclusively;

(d) any medical supplies or equipment of the bankrupt, insofar as the bankrupt may reasonably demonstrate these to be necessary for his own physical or mental well-being or that of any person related to him by consanguinity or affinity to the third degree inclusively; and

(e) any right of nomination that the bankrupt may have to any vacant ecclesiastical benefice.

493. (1) In order to secure possession of the property of the bankrupt, including his books, records and other papers, the bankruptcy trustee, shall apply to the Civil Court (Commercial Section), for the issue of a warrant of seizure against any person who may have possession of the property, including the bankrupt.

Seizure of
property.

(2) In the case of bankruptcy of a legal person, the warrant of seizure shall be executed not only at the principal offices or premises of the bankrupt, but also at the residence or premises of each of the persons jointly and severally liable for the debts of the legal person.

494. The books, records and other papers of the bankrupt shall be kept at such place as the court may direct, and shall be open to inspection by all interested parties on a written request made to the bankruptcy trustee, provided that the bankruptcy trustee is satisfied that the person making the request is an interested party.

Books open to
inspection by the
interested parties.

Bankruptcy estate.

495. (1) The bankruptcy estate shall include all sums due to the bankrupt, including any amounts derived by the bankrupt from the conduct of any activities in terms of articles 496, 497 and 498:

Provided that the provisions of this article shall cease to have effect until they are superseded by a debt agreement or bankruptcy order made in terms of this Part, and shall, in no event, apply for a period longer than three (3) years from the date of the judgment declaring bankruptcy.

(2) Where the bankrupt carries out activities in terms of article 498(3), the bankrupt shall be entitled to receive from the bankruptcy trustee, out of any sum due to the bankrupt by way of remuneration for the said activities, an amount to be determined by the bankruptcy trustee, which amount shall not be less than the national minimum wage established for persons of eighteen (18) years and over, calculated pro rata throughout the duration of the appointment of the bankruptcy trustee.

(3) Where the bankrupt is unable, for reasons which the bankruptcy trustee finds to be legitimate, to carry out activities in terms of article 498(3), the bankrupt shall be entitled to receive, from the bankruptcy estate, an allowance which shall not be less than the national minimum wage established for persons of eighteen (18) years and over, calculated pro rata throughout the duration of time during which the bankruptcy trustee is appointed.

(4) The amount referred to in sub-articles (2) and (3) shall exceed the national minimum wage where the bankrupt reasonably demonstrates to the satisfaction of the bankruptcy trustee, that the bankrupt has an overriding need for the additional amount on account of grave and justifiable circumstances specific to the bankrupt or his dependants.

Sale of perishables.

496. (1) The bankruptcy trustee shall, without delay sell, whether by means of a licensed auctioneer or otherwise, such assets as the bankruptcy trustee shall deem to be perishable.

(2) Any perishables in respect of which a right of recovery in terms of Title III has not been exercised prior to their sale, shall be sold in terms of sub-article (1), and any respective right of recovery shall be extinguished and the moneys realised shall form part of the bankruptcy estate in terms of article 495.

Sale of non-perishable assets.

497. (1) Non-perishable assets cannot be sold by the bankruptcy trustee prior to the confirmation of the proposed terms of a debt agreement in terms of Title V or the sale of assets held on trust in terms of Title VI, as the case may be, except in pursuance of a summary judgment of the court, upon a sworn application issued against the parties interested.

(2) In deciding upon the sworn application, the court shall, among other things, consider:

(a) whether the value of the asset will be substantially preserved by its immediate sale;

(b) whether the bankruptcy trustee requires additional liquidity to continue the trade, business, craft or profession of the bankrupt in accordance with article 498; and

(c) whether the bankrupt is urgently in need of moneys to satisfy his ordinary and reasonable daily expenses.

(3) No appeal shall lie against the pronouncement of the court made in terms of sub-article (1).

498. (1) It shall be lawful for the bankruptcy trustee, with the authority of the court, by a decree, to, where possible, cause the continuation of the trade, business, craft or profession of the bankrupt, where the bankruptcy trustee is of the opinion that the said continuation will afford a means of increasing his assets for the benefit of the body of creditors:

Bankruptcy trustee may continue business.

Provided that, as may be necessary for the continuation of the trade, business, craft or profession of the bankrupt, the bankruptcy trustee may request the authority of the court to make use of any property held on trust in the exercise of the said trade, business, craft or profession.

(2) The court shall, when granting such authority, give such directions by a decree as the court deems most advantageous to the interests of the body of creditors:

Provided that where any creditor files an opposition to a decree by the court in terms of this article, the court may, on just cause being shown, after hearing the bankruptcy trustee, withdraw the authority.

(3) Without prejudice to the provisions of sub-article (1), the bankrupt shall not carry out any act of trade until rehabilitated in terms of this Part. Any bankrupt who is a natural person may, prior to the rehabilitation in terms of articles 524(1)(b) or 534(1)(b), as the case may be, pursue the lawful conduct of any activity:

Provided that the conduct of that activity shall not require, give rise to, or necessitate, the performance of any acts of trade by the bankrupt:

Provided further that the exercise of any act of extraordinary administration in terms of article 1322 of the [Civil Code](#) by the bankrupt after the declaration of bankruptcy but prior to the rehabilitation in terms of articles 524(1)(b) or 534(1)(b), as the case may be, shall, at all times, require the express prior written consent of the bankruptcy trustee.

Cap. 16.

Sum of money
which bankruptcy
trustee may hold
on trust.

499. (1) The bankruptcy trustee may appropriate such sum or sums as the court shall determine, to remunerate the bankruptcy trustee and to meet any expenses as the bankruptcy trustee may reasonably incur in the performance of his duties in terms of this Part, as a first charge out of the bankruptcy estate in preference to any other expense. All other moneys shall continue to be held by the bankruptcy trustee on trust, distinct and separate from the personal property of the bankruptcy trustee and from other property held by the bankruptcy trustee under any other trust.

Cap. 632.

(2) The Minister may, in consultation with the competent authority mentioned in the [Insolvency Practitioners Act](#), make regulations for the payment of the expenses and remuneration of the bankruptcy trustee.

(3) The Court shall have the power to order that of the expenses and remuneration of the bankruptcy trustee are paid in terms of regulations made in terms of sub-article (2).

Action against
bankruptcy trustee.

500. (1) An action against the bankruptcy trustee may be brought by an interested party only on the grounds that the bankruptcy trustee has failed to carry out his functions, whether arising in terms of this Part or by order of the court.

(2) The bankruptcy trustee shall be unlimitedly and personally liable for any damages caused as a result of fraud or gross negligence on his part.

Preservation of
rights.

501. (1) The bankruptcy trustee, once appointed, shall take every necessary step for the preservation of rights previously pertaining to the bankrupt as against his debtors and shall also cause to be registered in the Public Registry any hypothec affecting the property of the debtors of the bankrupt, if the bankrupt has failed to do so.

(2) It shall be the duty of the bankruptcy trustee to sue for the payment of any debts due to the bankrupt, for the benefit of the bankruptcy estate.

(3) It shall not be lawful for the bankruptcy trustee to make any compromise or refer any dispute to arbitration without the consent in writing of the majority in value of the creditors of the bankrupt and the authority of the court.

Making up of
inventory.

502. (1) Within thirty (30) days from the judgment declaring bankruptcy, the bankruptcy trustee shall make up an inventory of the property comprising the bankruptcy estate and file such inventory in the registry:

Provided that the inventory shall be updated by the bankruptcy trustee with such frequency as the bankruptcy trustee may deem appropriate, having regard to the facts and circumstances, and in no case later than three (3) months from the last filing of the inventory.

(2) The period for the making up of the original inventory may, on the request of the bankruptcy trustee and for just cause, be extended to not more than forty-five (45) days.

(3) Every creditor has a right, and the bankrupt is bound, to assist in the making up of the inventory.

503. The inventory shall contain a true list, together with a description and the estimated value, of all the property movable and immovable comprising the bankruptcy estate held on trust by the bankruptcy trustee, a statement of the debts owing to or due by the bankruptcy estate, a statement of the profits and losses of the bankrupt, and a statement of the expenses.

Contents of inventory.

504. It shall be lawful for the Civil Court (Commercial Section), of its own motion or on the demand of the bankruptcy trustee or of one (1) or more of the creditors, to compel the bankrupt and any other person to declare on oath all such information as it may deem necessary or useful in the interest of the body of creditors or for the making up of the inventory, or to confirm on oath the correctness of the inventory.

Power of the court.

Title III
OF THE RIGHTS OF RECOVERY

Substituted by:
[XXIII.2022.7.](#)

505. In case of bankruptcy, it shall be lawful to recover all bills of exchange and other documents of title yet unpaid which are found in kind in the possession of the bankrupt at the time of the bankruptcy, whenever such bills of exchange or documents of title shall have been endorsed by the owner for collection for his own account.

Recovery of bills of exchange, etc.

506. (1) It shall likewise be lawful to recover goods delivered to the bankrupt by way of deposit or sold on account of the owner, so long as the same exist in kind, wholly or in part.

Recovery of goods.

(2) It shall also be lawful to recover the price or part of the price of such goods, which has not been paid in cash or otherwise, or set off in account current between the bankrupt and the buyer.

507. (1) Goods sold to the bankrupt or forwarded to his account may be recovered, so long as they are in his possession or in the possession of the bankruptcy trustee.

Recovery of goods sold to bankrupt.

(2) Nevertheless, such right of recovery may not subsist in cases where, before their arrival, the goods have been, without fraud, sold on invoices or bills of lading signed by the party forwarding the goods.

(3) The party recovering the goods shall be bound to return to the bankruptcy estate the sums received by him on account, and all advances made in respect of freight, commission, insurance or

other expenses, and shall pay what remains due in respect of such charges.

Goods not yet delivered to bankrupt.

508. It shall be lawful for the seller to retain any goods sold by him to the bankrupt that are yet unpaid for by the bankrupt, and which have not yet been delivered to the bankrupt or not yet forwarded to him or to a third party on his behalf.

Bankruptcy trustee's power to withdraw goods.

509. In the cases mentioned in articles 507 and 508, the bankruptcy trustee shall have the power to take the goods on paying the seller the price agreed upon between him and the bankrupt.

Substituted by:
[XXIII.2022.8.](#)

Title IV

OF THE PROOF OF DEBTS AGAINST THE BANKRUPTCY ESTATE

List of creditors.

510. (1) Within fourteen (14) days of filing the inventory in the registry, the bankruptcy trustee shall make a list of all the creditors, and file such list in the registry.

Meeting of creditors.

(2) Within fourteen (14) days of the filing of the list of creditors in the registry, the registrar shall, by order of the court, summon a meeting of the creditors by means of a notice published in the Gazette and in one (1) or more newspapers, which meeting shall be held not later than thirty (30) days from such order, in the presence of the court on the day and at the place fixed in the notice:

Provided that a copy of the notice shall be served upon the listed creditors at their residential or business address, by means of registered post.

Organisation of debts.

(3) The bankruptcy trustee shall, at such meeting, present a written debt register, by virtue of which the bankruptcy trustee shall examine the bankrupt's debts and organise the debts separately into commercial debts and personal debts, having regard to the quality and nature of such debts, and the manner in which they arose or were incurred:

Provided that, in the event that the debt register comprises a debt that has not been incurred exclusively in the pursuit of a trade, business, craft or profession, the bankruptcy trustee shall designate the said debt as being a commercial debt only to the extent that the debt has been incurred in a manner that would cause the debt to be treated as a commercial debt in accordance with article 477, having regard, in particular, to:

(a) the manner in which any asset, good, or service that has been acquired by virtue of the debt under examination has been utilised or consumed;

(b) the importance of any asset, good, or service that has been acquired by virtue of the debt under examination, to the trade, business, craft or profession of the bankrupt and the manner in which said asset, good, or service has been integrated into the bankrupt's commercial practices and relied

upon for the purposes thereof; and

(c) the extent to which any asset, good, or service that has been acquired by virtue of the debt under examination, has been enjoyed for purposes extraneous to the trade, business, craft or profession of the bankrupt.

Therefore, and for the purposes of this Part, any debt that has not been incurred exclusively in the pursuit of a trade, business, craft or profession shall, to the extent that the said debt has been designated as being a commercial debt in terms of this article, be treated as a commercial debt, and otherwise as a personal debt.

(4) The debt register shall comprise, as a minimum:

Contents of debt register.

(a) the value of each debt;

(b) the name and address of the creditor to whom each debt pertains;

(c) the date on which each debt arose;

(d) the bankruptcy trustee's classification of each debt as a commercial or personal debt, provided that, where the debt has not been incurred exclusively in the pursuit of a trade, business, craft or profession, the bankruptcy trustee shall set out the extent to which the debt has been designated as being a commercial debt in terms of sub-article (3), and shall provide any relevant documentation or information substantiating the manner in which the debt has been designated;

(e) the cause and nature of any preference or security, if any, attaching to each debt; and

(f) the manner in which all of the bankrupt's debts shall rank according to law.

511. (1) Every creditor of the bankrupt shall, at any time prior to such meeting, submit a request to the bankruptcy trustee for the admission of his debt, and shall produce and specify the documents in support of the same, on the basis of which the bankruptcy trustee shall decide whether to admit or refuse the claim, and the contents of the inventory and debt register shall be determined accordingly.

Application of creditor.

(2) Any interested party may, within twenty (20) days of such meeting, make submissions against the veracity of the contents of the inventory and debt register. The court shall only make the determination contemplated in article 514 after having heard the debtor, the bankruptcy trustee, or the creditors, as the case may be.

(3) A *procès verbal* shall be drawn up containing the pleas set

up by the debtor, the bankruptcy trustee and the creditors.

Person interested
can assist in the
examination of
claims.

512. Any person, although his debt has not been proved and admitted, may, on summarily showing that he is interested, assist in the examination of the claims of the other creditors and set up pleas in regard thereto, and shall, following a request made to the bankruptcy trustee, be provided, at his expense, a copy of the inventory and debt register.

False claim.

513. (1) Where any person wilfully makes any false claim or falsely claims a larger sum than that actually due to him, he may be sued before the Civil Court (Commercial Section), and shall, on conviction, be liable for the payment of twice the amount falsely claimed, for the benefit of the estate of the bankrupt.

(2) Such an action may be brought by the bankrupt, by any creditor of the bankrupt, or by the bankruptcy trustee, and shall lapse after a period of five (5) years from the date of such claim.

Examination of
submissions.

514. (1) Following the submissions referred to in article 511(2), the court shall proceed to the examination of the submissions. The court shall confirm or vary the contents of the debt register, as may be relevant within thirty (30) days of the submissions of an interested party in terms of article 511(2).

(2) The bankruptcy trustee shall, within fourteen (14) days, supplement the contents of the inventory referred to in article 502(1), by the publication of the debt register drawn up in accordance with the requirements of article 510, and the debt register shall be maintained and updated with such frequency as the inventory in accordance with the requirements of article 502(1).

(3) Notwithstanding the expiration of the period referred to in article 511(2), any interested person may, by application to the court, request leave to present an application to the bankruptcy trustee for the admission of a debt not previously brought to his attention. Where the court accedes to the request, the bankruptcy trustee shall update the debt register and the procedures in articles 511(1) and (2), and 514(1), shall, *mutatis mutandis*, apply.

Appeal.

515. (1) Any decree made in terms of article 514(1) shall be subject to appeal, by application filed in the registry of the Court of Appeal within twenty (20) days from the date of the decree, and any such appeal shall have no suspensive effects on proceedings in terms of this Part:

Provided that where more than one (1) appeal against the decree is filed, the Court of Appeal shall hear all appeals simultaneously:

Provided further that in hearing the appeal, the Court of Appeal may decide to admit any new document or testimony as evidence of a debt being claimed. Where, however, the Court of Appeal finds that the claim itself, or any new document or testimony

related to it, could have been filed at the time of the submissions made in terms of article 511(2), the Court of Appeal may order the appellant to bear the costs of the appeal, in whole or in part.

(2) An appeal against the decree shall not lie on the grounds that a debt, not incurred exclusively in the pursuit of a trade, business, craft or profession, has been incorrectly apportioned in terms of the proviso to article 510(3), except where the respective creditor is able to demonstrate that the apportionment has been performed in a manner that is manifestly incorrect, grossly negligent, or fraudulent.

516. (1) The debt register shall separately identify and contain the names of any known creditors who failed to appear, in person or by proxy, at the meeting referred to in article 510(2), and the said creditors who failed to appear shall not be taken into account:

List of creditors
failing to appear.

Provided that any listed creditor who would have ranked below the debt pertaining to known creditors who failed to appear, shall only receive payment of his debt, in terms of this Part, on condition that he provides sufficient security to the satisfaction of the bankruptcy trustee that will ensure the making, by him, of a pro rata contribution in favour of any creditor who has failed to appear in the event of their appearing within one (1) year from the day on which the security was given.

(2) Any creditor that has failed to appear at the meeting referred to in article 510(2) shall have the right to request the court to order his inclusion in the debt register and to order the taking of such other action as may be necessary so as to give effect to their inclusion.

Title V

OF BANKRUPTCY WITH DEBT AGREEMENT

Substituted by:
[XXIII.2022.9.](#)

517. (1) After the publication of the debt register in accordance with article 514(2), the registrar shall call a meeting of the creditors whose claims have been admitted, that shall be held within thirty (30) days of the publication.

Call of meeting.

(2) The bankrupt shall also be summoned to such meeting. He cannot attend by proxy except with the approval and for reasons approved by the court. The court shall examine the instruments of proxy of those who appear on behalf of absent creditors.

518. (1) The court shall cause the bankruptcy trustee to give, in its presence, an account of the state of the bankruptcy and of everything that has taken place since the commencement of proceedings, including but not being limited to:

Proceedings during
meeting.

(a) any property of the bankruptcy estate that the bankruptcy trustee has determined to fall within the terms of

article 492;

(b) the admitted debts, and the contents of the inventory and debt register; and

(c) whether, in the view of the bankruptcy trustee, any evidence subsists to indicate that the bankruptcy may be fraudulent.

(2) The bankrupt may, in all cases, be heard. If absent, the meeting shall continue without him and the bankruptcy trustee shall file a note in the registry recording this absence.

Terms of debt agreement and debtor's income payment plan.

519. (1) During the meeting, the bankruptcy trustee shall propose for discussion and approval by the creditors, the terms of a debt agreement, for the settlement of the claims of the creditors, in whole or in part, out of the bankruptcy estate, which terms have been agreed to by the bankrupt.

(2) Where the bankrupt is a natural person, the bankruptcy trustee may propose, within the terms of the debt agreement referred to in sub-article (1), an income payment plan, in terms of which the bankrupt shall be required to continue to contribute a defined amount of money towards the bankruptcy estate in the hands of the bankruptcy trustee, out of anything that devolves on, or is derived by, the bankrupt after the rehabilitation in terms of article 524(1)(b), for a period not exceeding three (3) years to be reckoned from the date of appointment of the bankruptcy trustee, for the further settlement of debts, in whole or in part, in accordance with the terms of the debt agreement.

(3) The bankruptcy trustee shall, in support of the debt agreement, provide such information as shall be necessary to enable the creditors to appropriately evaluate the proposed terms, and in the case of an income payment plan being proposed in terms of sub-article (2), such information shall include a financial projection covering the entire duration of the income payment plan as proposed, illustrating:

(a) the income that the bankrupt may be reasonably expected to generate, on the basis of the bankruptcy trustee's best assessment, regard being had to the bankrupt's circumstances, previous experience, and qualifications; and

(b) the expenditure that the bankrupt may be reasonably expected to incur, on the basis of the bankruptcy trustee's best assessment, regard being had to the bankrupt's circumstances and dependants.

(4) The bankruptcy trustee shall, during such meeting, organise the creditors into classes, for the purpose of voting on the proposed terms, as the bankruptcy trustee may deem necessary to distinguish between the varying economic interests thereof, and which classes shall, at minimum, distinguish between:

- (a) the holders of secured debts;
- (b) the holders of unsecured debts;
- (c) the holders of subordinated debts, meaning debts that, in the event of the liquidation of the bankruptcy estate, would remain unpaid until the full settlement of all the non-subordinated debts of the bankrupt; and
- (d) the holders of any ownership rights, or other similar interests, in the bankrupt.

(5) The creditors may, at the discretion of the bankruptcy trustee, be further divided into additional classes, as may be necessary in order to distinguish between creditors within the same class but having debts pertaining to different legal priorities.

(6) All creditors comprising part of a specific class shall be treated equally for the purposes of the proposed terms, except insofar as with regard to any detrimental treatment that is expressly agreed to by the directly affected creditor or creditors.

(7) Any agreement extraneous to the proposed terms, howsoever formulated, that purports to grant an unfair advantage to a creditor, shall be null and void.

520. The creditors shall have at least fourteen (14) days to consider the proposed terms of the debt agreement, and shall reconvene on the day and at such time fixed by the court, which shall be in no case later than thirty (30) days thereafter, for the taking of a vote in the presence of the judge.

Taking of votes.

521. (1) The registrar shall draw up a *procès verbal* of the proceedings that have been held and of the resolutions passed at such meetings.

Proposed terms shall be agreed upon by majority of creditors.

(2) Only classes of creditors shall be entitled to vote, and the proposed terms shall be deemed to be approved by the body of creditors upon receiving the approval of each class of creditors.

(3) The vote of a class of creditors shall be exercised on the basis of a resolution of the creditors comprising that class, which resolution shall be supported by at least seventy-five percent (75%) of the said creditors by reference to the value of the debts represented thereby, for the purpose of approval.

(4) Where such agreement does not secure the support of each class of creditors in terms of sub-article (2), the proposed terms shall be approved by the court in accordance with article 523, where the court is satisfied that the proposed terms:

- (a) shall not result in a dissenting creditor within a dissenting creditors' class being worse off under the proposed

terms than that dissenting creditor would be if the terms were not approved and proceedings were instead undertaken in terms of Title VI;

(b) do not purport to allow any class of creditors to receive economic value in excess of the full amount of the debts pertaining thereto;

(c) ensure that any dissenting class of creditors is treated at least as favourably as any other class of creditors whose debts would, if the normal ranking of creditors were to be applied, rank *pari passu* with the debts pertaining to the dissenting class of creditors, and more favourably than any other class of creditors whose debts would rank below the debts pertaining to the dissenting class; and

(d) have received the approval of classes of creditors representing, by reference to the value of the debts represented thereby, at least fifty percent (50%) by reference to the value of the debts.

(5) The Civil Court (Commercial Section) shall have the authority to examine and approve any request by tutors or curators of creditors for their approval or otherwise of the proposed terms and their execution.

Proposal of fresh terms.

522. (1) If the proposed terms are not deemed to have been approved by the creditors in accordance with article 521(3), the bankrupt, or any of the creditors, shall have the right during the same meeting, to, prior to the approval referred to in article 523, request the court to permit that the creditors submit a round of fresh terms within not more than fourteen (14) days of the refusal of the proposed terms, and in such case, the court shall allow the bankrupt and bankruptcy trustee to be heard before granting such leave

(2) When the court has granted leave for the proposal of fresh terms, it shall call a new meeting in terms of article 518, that shall be held not later than thirty (30) days from the granting of such leave, for the approval of the fresh terms. Any fresh terms shall be submitted to the bankruptcy trustee at least seven (7) days prior to such meeting, and the bankruptcy trustee shall undertake to discuss the fresh terms with the bankrupt prior to the meeting.

(3) The provisions of this article for the court to grant leave for the proposal of a round of fresh terms may only be availed of once:

Provided that any creditor may propose fresh terms during the meeting to be held in terms of sub-article (2), and when alternative terms are proposed for approval, all of the alternative proposed terms shall be considered.

(4) Where multiple alternative proposed terms are approved in

accordance with article 521(3), the court shall identify the proposed terms that enjoy the broadest support by reference to the value of the debts represented by the creditors voting in favour, and such terms shall prevail to the exclusion of all others.

523. (1) The court shall, when it is satisfied that the proposed terms have been approved in accordance with article 521(3), by order, confirm that the proposed terms have been lawfully approved by the creditors, and such confirmation shall be sufficient to make such terms binding.

Proposed terms shall be confirmed by court.

(2) If the proposed terms are not deemed to have been approved in accordance with article 521(3), their confirmation by the court, once it is satisfied that the conditions referred to in article 521(4) subsist, shall be sufficient to make such terms binding:

Provided that it shall be assumed by the court that the requirements of article 521(4)(a) are satisfied, without any further inquiry by the court, unless any dissenting creditor has, by application, requested the court to assess whether the said requirements do, in fact, subsist.

(3) The confirmation or refusal of the proposed terms by the court, and any decision of the court within the context of the proceedings for the proposal and confirmation of the proposed terms of a debt agreement, shall be subject to appeal, by application to the Court of Appeal within twenty (20) days from the day of the decision of the court to confirm or refuse the proposed terms.

(4) The Court of Appeal may, notwithstanding that it has accepted an appeal made in terms of sub-article (3), uphold the decision of the court to confirm the proposed terms at first instance, and provide such remedy as necessary to ensure that the appellant is protected from the effects of the proposed terms, or duly compensated, such that the appellant:

(a) shall be entitled to receive an amount at least equivalent to that which the appellant would have been entitled to if the normal ranking of priorities were applied, or in the event of the next-best-alternative scenario, if the proposed terms had not been confirmed; or

(b) shall be treated at least as favourably as any other creditor within any class of creditors whose debts would, if the normal ranking of priorities were to be applied, rank *pari passu* with the debts pertaining to the appellant, and more favourably than any other creditor within any class of creditors whose debts would, if the normal ranking of priorities were to be applied, rank below the debts pertaining to the appellant.

(5) An appeal made in terms of sub-article (3) shall have no suspensive effects on the execution of that decision, or on the execution of any proposed terms approved within the procedure in

which that decision was made.

Effects of
confirmation.

524. (1) On the proposed terms of the debt agreement being confirmed, the bankrupt shall:

(a) where the bankrupt is a legal person, be automatically discharged of all debts, and shall be struck off the relevant register, and any debts that shall remain unpaid following the execution of the terms of the debt agreement shall, where so provided in terms of law, become the personal liabilities of such other person or persons as so contemplated by law or by the constitutive documents of the legal person:

Provided that, insofar as required for the purposes of this sub-article, the bankruptcy trustee shall perform any duties that would ordinarily be assigned to the liquidator or such equivalent person being responsible for the winding up of the relevant legal person:

Provided further that the bankruptcy trustee shall notify the competent authority of the discharge of debt, and the competent authority shall, publish a notice of completion of bankruptcy proceedings within the records of the competent authority, to which the terms of the debt agreement shall be annexed; or

(b) where the bankrupt is a natural person, be deemed to be *ipso jure* rehabilitated to trade, and may recover the ownership and possession of his property, in whole or in part, under the conditions, if any, embodied in the debt agreement:

Provided that a stipulation that the bankrupt shall have no power to do any one (1) or various acts, whether of administration or of alienation, without the consent of the bankruptcy trustee, until the complete or partial fulfilment of the bankrupt's obligations in terms of the income payment plan, shall be a valid stipulation, and shall have effect even against third parties who have contracted in good faith with the bankrupt alone:

Provided further that upon the fulfilment of the terms of the income payment plan, or upon the confirmation of the proposed terms of the debt agreement if these do not comprise an income payment plan, the bankrupt shall be automatically discharged of all commercial debts that may at any time previous to the declaration of bankruptcy have been claimed against him, and the payment of any commercial debt, or part thereof, of the bankrupt that shall remain unpaid following the full execution of the terms of the debt agreement shall be abated in full, to the benefit of the bankruptcy estate.

(2) Upon the rehabilitation to trade of a bankrupt, being a natural person, a notice of the rehabilitation shall be published by the bankruptcy trustee, by means of a notice in the Gazette and in any one (1) or more newspapers.

(3) Upon the rehabilitation to trade of a bankrupt, being a natural person, any personal debts of the bankrupt that shall remain unpaid following the full execution of the terms of the debt agreement, shall, by novation, become the personal liabilities of the rehabilitated bankrupt, provided that the novation of such debts shall, notwithstanding the provisions of article 1186 of the [Civil Code](#), be without prejudice to the preservation of any privilege or hypothec securing the debt:

Cap. 16.

Provided that an application may be made to the court by the rehabilitated bankrupt, by not later than twenty (20) days from the confirmation of the proposed terms, for any of the aforementioned personal liabilities to remain the liabilities of the bankruptcy trustee, who shall continue to receive payment from the rehabilitated bankrupt against such personal liabilities, in terms of the provisions of an agreement reached by and between the rehabilitated bankrupt and the relevant creditors thereof, until the respective personal debt has been satisfied in full, or until an earlier resolute condition expressly stipulated in the agreement between the rehabilitated bankrupt and his creditor or creditors has been reached:

Provided further that the court shall only accede to a request made in terms of the first proviso if it is satisfied that a valid agreement has been reached by and between the rehabilitated bankrupt and the relevant creditors thereof, and only after having received the assent of the bankruptcy trustee.

(4) The provisions of a debt agreement shall not be subject to change following the confirmation thereof, provided that amendment to the terms of an income payment plan comprising part of a debt agreement may be requested, at any time prior to the fulfilment of the terms thereof, by:

(a) the bankrupt, in the event that, due to a material change in the circumstances of the bankrupt or his dependants, the obligations set out in terms of the income payment plan exceed the means of the bankrupt; or

(b) the creditors of the bankrupt, in the event that, due to a material change in the circumstances of the bankrupt, the bankrupt may make a greater contribution towards the payment of his debts.

(5) Any stipulation contained in the instrument of the debt agreement, not being contrary to law, shall be valid. The aforementioned instrument may provide for the selection of one (1) or more persons, for the purpose of ensuring the execution of the

terms thereof, of assisting in the sale of property if any such sale takes place, and of ensuring the distribution of the proceeds amongst the several creditors.

(6) A default in making payment according to the terms of the debt agreement shall have no effect on the abatement of debts discharged in terms of the provisions of this Part.

Where debt agreement provides for the abatement of personal debts.

525. If the debt agreement provides for the abatement of all or any part of a personal debt, the bankrupt shall be discharged, even as regards his future property, from the part abated:

Provided that such abatement and any time granted to the bankrupt for the payment of the personal debt shall not operate in favour of any other person, being a co-debtor or surety jointly and severally liable with the bankrupt.

Right of action of creditors against co-debtors.

526. Notwithstanding the debt agreement, the right of action of the creditors for the whole amount of their debts against the co-debtors or sureties jointly and severally liable with the bankrupt shall remain unimpaired, even though such creditors may have assented to the debt agreement.

The bankruptcy trustee shall render accounts.

527. (1) The bankruptcy trustee shall, within fourteen (14) days subsequent to the approval of the debt agreement, or, where relevant, from the date of the completion of the last of those terms of the debt agreement which require the intervention of the bankruptcy trustee, render his final account, and may be compelled to render such account at the instance of the bankrupt or of any other interested party.

(2) The bankruptcy trustee shall, within a period of fourteen (14) days from the date of delivery of his final account, deliver to the bankrupt or to the person appointed under the debt agreement, all the bankrupt's property, books, records and other papers or effects, in accordance with the terms of the debt agreement.

(3) Without prejudice to the requirements of sub-article (1), the bankruptcy trustee shall, every six (6) months, that shall be reckoned from the date of confirmation of the debt agreement, until the date of the submission of final accounts referred to in sub-article (1), present an interim report to the court of all activities conducted by the bankruptcy trustee, during the relevant period. The court shall, upon receipt of the report, assess the extent to which the bankruptcy trustee's functions are being conducted in a manner consistent with the object and purpose of his appointment, and the court shall, where necessary, give such orders as required to ensure the swift and effective execution of the terms of the debt agreement.

Title VI

*Substituted by:
XXIII.2022.10.*

OF BANKRUPTCY WITHOUT DEBT AGREEMENT

528. If the bankrupt at any time communicates his intention to proceed with a bankruptcy without a debt agreement, or does not provide his consent to the proposed terms of a debt agreement in terms of the provisions of Title V, or in the event that the proposed terms are not confirmed by the creditors and leave has not been granted for the proposal of fresh terms in accordance with article 522, or if the proposed terms have not been confirmed by the court in accordance with article 523, the court shall:

If debt agreement
is not approved.

(a) if the bankrupt is a legal person, instruct the bankruptcy trustee to appear before the court, on such date, and at such a time as shall be specified in the relevant notice, being a date which shall not be later than thirty (30) days from the meeting held in terms of article 518, to present the proposed terms of the bankruptcy order, which shall include:

(i) the admitted debts and the contents of the inventory and debt register;

(ii) a request to proceed to the sale of assets comprising the bankruptcy estate, under the authority of the court; and

(iii) a request for such additional authorisations as the bankruptcy trustee may consider to be necessary or required for the fulfilment of the proposed terms of the bankruptcy order;

(b) if the bankrupt is a natural person, instruct the bankruptcy trustee to appear before the court, on such date, and at such a time, as shall be specified in the relevant notice, being a date which shall not be later than thirty (30) days from the meeting held in terms of article 518, to present the proposed terms of the bankruptcy order, which shall include:

(i) the admitted debts and the contents of the inventory and debt register;

(ii) the assets, retained by the bankrupt, that the bankruptcy trustee has deemed to be protected in terms of article 492, provided that the bankruptcy trustee shall, where he deems that such assets have an excessive value in consideration of the circumstances of the bankrupt, or in any circumstances where he is so petitioned by creditors representing in excess of ten per cent (10%) of the admitted debts, propose that such assets be seized and realised in terms of article 528(b)(iii), and that a determined portion of the resultant

proceeds be reimbursed to the bankrupt, as the bankruptcy trustee may deem necessary for the bankrupt to secure the use of assets that would represent a suitable replacement;

(iii) the assets, forming part of the bankruptcy estate, that shall be sold, under the authority of the court, for the settlement of the debts pertaining to the creditors, in whole or in part;

(iv) the conditions, if any, pursuant to which the bankrupt may recover ownership of those assets, forming part of the bankruptcy estate, which are not proposed for sale in terms of article 528(b)(iii), provided that such assets shall automatically fall to be sold in terms of article 528(b)(iii) if the prescribed conditions are not met;

(v) the established amount that the bankrupt shall contribute towards the bankruptcy estate in the hands of the bankruptcy trustee, in terms of an income payment plan, if any, forming part of the bankruptcy order, out of anything that devolves on, or is derived by, the bankrupt after the rehabilitation in terms of article 534(1)(b), for a period not exceeding three (3) years that shall be reckoned from the date of the original appointment of the first bankruptcy trustee, for the further settlement of debts, in whole or in part, which amount shall be formulated in accordance with the bankruptcy trustee's projection of the bankrupt's income and expenditure in terms of article 519(3); and

(vi) any other obligations that shall be imposed on the bankrupt for the duration of the income payment plan.

Minimum
requirements of the
bankruptcy order.

529. (1) The provisions of a bankruptcy order, in terms of article 528(b), shall ensure that the bankrupt is permitted to retain moneys equivalent to the combined value of:

(a) the national minimum wage established for persons of eighteen (18) years and over, calculated pro rata for the duration of the income payment plan; and

(b) an additional amount in excess of the national minimum wage where the bankrupt reasonably demonstrates, to the satisfaction of the court, that the bankrupt has an overriding need for the additional amount on account of grave and justifiable circumstances specific to the bankrupt or his dependants.

(2) Any funds resulting from the sale of those assets comprising the bankruptcy estate and listed in terms of article 528(b)(iii) shall be utilised for the settlement of the debts of the bankrupt, whether personal or commercial in nature, in the order in which these shall rank in terms of law.

(3) Any contributions to the bankruptcy estate made by virtue of an income payment plan in terms of article 528(b)(v) shall be utilised exclusively for the settlement of the commercial debts of the bankrupt, in the order in which these shall rank according to law:

Provided that any contributions to the bankruptcy estate made in terms of an income payment plan by virtue of article 528(b)(v) that are made subsequent to the full settlement of the commercial debts of the bankrupt shall be utilised for the further settlement of the personal debts of the bankrupt.

530. During the hearing referred to in article 528, the bankruptcy trustee shall also present a statement reflecting his evaluation of whether the bankruptcy may be fraudulent, and in the event that the statement maintains the possibility of the subsistence of fraud, the bankruptcy trustee shall submit all evidence in support of his statement.

Presentation of evidence regarding fraud.

531. The bankrupt and the creditors shall, at such hearing, or at a later date that shall be determined by the court, be given the opportunity to be heard.

Right to be heard.

532. (1) Within fourteen (14) days of the hearing held in terms of article 528, or article 531 if applicable, the court shall, by order, proceed to confirm, subject to any variations as it may deem appropriate, the proposed terms of the bankruptcy order proposed in accordance with article 528, and such confirmation shall be sufficient to make the proposed terms binding.

Confirmation and variation.

(2) Upon the confirmation by the court in terms of sub-article (1), the court shall accede to the request of the bankruptcy trustee to proceed, within such period as shall be stipulated by the court, to the sale, under the authority of the court, of those assets comprising the bankruptcy estate and listed in terms of articles 528(a)(i) or 528(b)(iii).

(3) The terms of the bankruptcy order, and any decision of the court within the context of the proceedings for the making of a bankruptcy order, shall be subject to appeal, by application to the Court of Appeal within twenty (20) days from the day of the decision of the court to confirm or refuse the proposed terms of the bankruptcy order.

(4) The Court of Appeal may, notwithstanding that it has accepted an appeal made in terms of sub-article (3), uphold the decision of the court to confirm the proposed terms at first instance, and provide such remedy as necessary to ensure that the appellant

is protected from the effects of the proposed terms, or duly compensated, such that the appellant:

(a) shall be entitled to receive an amount at least equivalent to that which the appellant would have been entitled to if the normal ranking of priorities were applied, or in the event of the next-best-alternative scenario, if the proposed terms had not been confirmed; and

(b) shall be treated at least as favourably as any other creditor within any class of creditors whose debts would, if the normal ranking of priorities were to be applied, rank *pari passu* with the debts pertaining to the appellant, and more favourably than any other creditor within any class of creditors whose debts would, if the normal ranking of priorities were to be applied, rank below the debts pertaining to the appellant.

(5) An appeal made in terms of sub-article (3) shall have no suspensive effects on the execution of that decision, or on the execution of any proposed terms approved within the procedure in which that decision was made.

Redemption of
pledges.

533. (1) Upon being instructed to proceed to the sale of assets comprising the bankruptcy estate, the bankruptcy trustee shall be authorized to redeem pledges, for the benefit of the bankruptcy estate, upon payment of the respective debts.

(2) If the pledge is not redeemed by the bankruptcy trustee, and is sold by the creditor for a price exceeding the debt, the surplus shall be collected by the bankruptcy trustee; if the price realized is less than the debt, the creditor who had the pledge may prove and compete for the difference.

Liability for unpaid
debts and
rehabilitation.

534. (1) Upon the instruction by the court, to the bankruptcy trustee to proceed to the sale of assets comprising the bankruptcy estate, the bankrupt shall, provided that there is no determination by the court of the bankruptcy being fraudulent:

Where the
bankrupt is a legal
person.

(a) where the bankrupt is a legal person, be automatically discharged of all debts, and shall be struck off the relevant register, and any debts that shall remain unpaid following the sale of assets shall, where so provided in terms of law, become the personal liabilities of such other person or persons as so contemplated by law or by the constitutive documents of the legal person:

Provided that, insofar as required for the purposes of this sub-article, the bankruptcy trustee shall perform any duties that would ordinarily be assigned to the liquidator or such equivalent person being responsible for the winding up of the relevant legal person:

Provided further that the bankruptcy trustee shall notify the competent authority of the discharge of debt, and the competent authority shall publish a notice of completion of bankruptcy proceedings within the records of the competent authority, to which the terms of the bankruptcy order shall be annexed; or

(b) where the bankrupt is a natural person, be deemed to be *ipso jure* rehabilitated to trade, and may recover the ownership and possession of his property, in whole or in part, under the conditions, if any, embodied in the bankruptcy order:

Where the bankrupt is a natural person.

Provided that a stipulation that the bankrupt shall have no power to do any one (1) or various acts, whether of administration or of alienation, without the consent of the bankruptcy trustee, until the complete or partial fulfilment of the bankrupt's obligations in terms of the income payment plan, shall be a valid stipulation, and shall have effect even against third parties who have contracted in good faith with the bankrupt alone:

Provided further that upon the fulfilment of the terms of the income payment plan, or upon the confirmation of the proposed terms of the bankruptcy order if these do not comprise an income payment plan, the bankrupt shall be automatically discharged of all commercial debts that may at any time previous to the declaration of bankruptcy have been claimed against him,

and the payment of any commercial debt, or part thereof, of the bankrupt that shall remain unpaid following the full execution of the terms of the bankruptcy order shall be abated in full, to the benefit of the bankruptcy estate.

(2) Upon the rehabilitation to trade of a bankrupt, being a natural person, a notice of the rehabilitation shall be published by the bankruptcy trustee, in the Gazette and in any one (1) or more newspapers.

(3) Upon the rehabilitation to trade of a bankrupt, being a natural person, any personal debts of the bankrupt that shall remain unpaid following the full execution of the terms of the bankruptcy order, shall, by novation, become the personal liabilities of the rehabilitated bankrupt, provided that the novation of such debts shall, notwithstanding the provisions of article 1186 of the [Civil Code](#), be without prejudice to the preservation of any privilege or hypothec securing the debt:

Cap. 16.

Provided that an application may be made to the court by the rehabilitated bankrupt, by not later than twenty (20) days from the making of a bankruptcy order, for any of the aforementioned

personal debts to remain the liabilities of the bankruptcy trustee, who shall continue to receive payment from the rehabilitated bankrupt against such personal debts, in terms of an agreement reached by and between the rehabilitated bankrupt and the relevant creditors thereof, until the respective personal debt has been satisfied in full, or until an earlier resolute condition expressly stipulated in the agreement between the rehabilitated bankrupt and his creditor or creditors has been reached:

Provided further that the court shall only accede to a request made in terms of the first proviso, if it is satisfied that a valid agreement has been reached by and between the rehabilitated bankrupt and the relevant creditors thereof, and only after having received the assent of the bankruptcy trustee.

(4) The provisions of a bankruptcy order shall not be subject to change following the confirmation thereof, provided that amendment to the terms of an income payment plan comprising part of a bankruptcy order may be requested at any time prior to the fulfilment of the terms thereof, by:

(a) the bankrupt, in the event that, due to a material change in the circumstances of the bankrupt or his dependants, the obligations set out in terms of the income payment plan exceed the means of the bankrupt; or

(b) the creditors of the bankrupt, in the event that, due to a material change in the circumstances of the bankrupt, the bankrupt is able to make a greater contribution towards the payment of commercial debts that would otherwise be discharged.

(5) Any stipulation contained in the bankruptcy order, not being contrary to law, shall be valid. The aforementioned instrument may provide for the selection of one (1) or more persons, for the purpose of ensuring the execution of the terms thereof, of assisting in the sale of property if any such sale takes place, and of securing the distribution of the proceeds amongst the several creditors.

(6) A default in making payment according to the terms of the bankruptcy order shall have no effect on the abatement of debts discharged in terms of the provisions of this Part.

Where bankruptcy order provides for the abatement of part of debt.

535. If the bankruptcy order provides for the abatement of all or any part of a personal debt, the bankrupt shall be discharged, even as regards his future property, from the part abated:

Provided that such abatement and any time granted to the bankrupt for the payment of the personal debt shall not operate in favour of any other person, being a co-debtor or surety jointly and severally liable with the bankrupt.

536. Notwithstanding the bankruptcy order, the right of action of the creditors for the whole amount of their debts against the co-debtors or sureties jointly and severally liable with the bankrupt shall remain unimpaired.

Right of action of creditors against co-debtors.

537. (1) The bankruptcy trustee shall, within fourteen (14) days subsequent to the approval of the bankruptcy order, or, where relevant, from the date of the completion of any of the terms of the bankruptcy order which require the intervention of the bankruptcy trustee, render his final account, and may be compelled to render such account at the instance of the bankrupt or of any other interested party.

The bankruptcy trustee shall render accounts.

(2) The bankruptcy trustee shall, within a period of fourteen (14) days from the date of delivery of his final account, deliver to the bankrupt or to the person appointed under the bankruptcy order, all the bankrupt's property, books, records and other papers or effects, in accordance with the terms of the bankruptcy order.

(3) Without prejudice to the requirements of sub-article (1), the bankruptcy trustee shall, every six (6) months, that shall be reckoned from the date of confirmation of the bankruptcy order until the date of the submission of final accounts referred to in sub-article (1), present an interim report to the court of all activities conducted by the bankruptcy trustee, during the relevant period. The court shall, upon receipt of the report, assess the extent to which the bankruptcy trustee's functions are being conducted in a manner consistent with the object and purpose of his appointment, and the court shall, where necessary, give such orders as required to ensure the swift and effective execution of the terms of the bankruptcy order..

Title VII

OF BANKRUPTCY IN GENERAL

Substituted by:
[XXIII.2022.11.](#)

538. In all cases of bankruptcy:

General provisions.

(1) (a) Upon the authorisation of the court for the bankruptcy trustee to proceed to the sale of assets comprising the bankruptcy estate in terms of article 497, or in pursuance to a debt agreement, or a bankruptcy order, and if the bankruptcy trustee has identified the need to obtain the consent of a creditor prior to the transfer of any asset or assets, and, or, where the creditor is required to appear on any pertinent public deed so as to consent to the cancellation of, or a reduction in, any cause of preference and the registration of the same, enjoyed by the creditor over the said asset or assets, the bankruptcy trustee may, if he is of the opinion that the consent of the said creditor is, or may be withheld, make an application to the court for the appointment of a curator.

Appointment of curator to give his consent in lieu of a creditor.

(b) A curator appointed in terms of this article, may under

the authority of the court, consent to the transfer of assets and, or, appear on any pertinent public deed to consent for and on behalf of the creditor, referred to in paragraph (a), who may withhold his consent to the cancellation of, or reduction in, any cause of preference, and the registration of the same, enjoyed by the said creditor, on condition that the curator receives that portion of the proceeds of the sale of assets which, in terms of law and subject to the debt agreement or bankruptcy order, which pertains to the said creditor, that shall be applied in his favour in terms of article 538(1)(c):

Provided that the court shall only proceed to the appointment of a curator for the sale of assets comprising the bankruptcy estate in terms of article 497, where the bankruptcy trustee has, in his application, expressed the opinion that the creditor, referred to in paragraph (a), who may withhold his consent shall receive, as a result of the sale of assets, an amount at least equivalent to that which the said creditor would have been entitled to if the normal ranking of priorities were applied, or in the event of the next-best-alternative scenario, if the sale of assets were not to take place.

(c) The curator shall receive, for and on behalf of the creditor, referred to in paragraph (a), who may withhold his consent, that portion of the proceeds of the sale of assets referred to in article 538(1)(b) which, in terms of law and subject to the debt agreement or bankruptcy order, pertains to the said creditor, and shall ensure that such funds are either distributed to the said creditor or, if this is not reasonably practicable, deposited in court for the benefit of the said creditor:

Provided that the proceeds of a sale of assets in terms of article 497, shall not be distributed or deposited in terms of paragraph (c), but shall aggregate to the bankruptcy estate in terms of article 495.

(2) (a) once the judgment declaring bankruptcy is given in terms of article 488, no interest on the sums due by the bankrupt shall accrue from the date of the declaration of bankruptcy made by the trader himself, or from the date of the application by a creditor demanding a declaration of bankruptcy, as the case may be; and

(b) there shall be no possibility of discharge with respect to debts arising from:

(i) any fine (ammenda or multa) due by the debtor in terms of the Laws of Malta;

(ii) civil debts due by the debtor by way of damages in tort;

(iii) wages due by the debtor and constituting a privileged claim over the assets of the debtor in terms of article 20 of the [Employment and Industrial Relations Act](#); Cap. 452.

(iv) debts due by the debtor by way of fraudulent or wrongful trading in terms of the relevant provisions of the [Companies Act](#); and Cap. 386.

(v) debts due by the debtor in relation to maintenance obligations in terms of the relevant provisions of the [Civil Code](#). Cap. 16.

539. (1) The benefits granted by articles 524 and 534 in favour of the bankrupt shall not apply in the case of fraudulent bankruptcy. Fraudulent bankruptcy.

(2) A bankrupt shall be deemed to be a fraudulent bankrupt in each one (1) of the following cases:

(a) if he makes an untrue statement in respect of the debts owing to or from him, or in respect of his bankruptcy, saving any criminal proceedings which may be brought against the bankrupt for having perjured himself or sworn falsely;

(b) if he has simulated any expenses or losses or if he fails to give a satisfactory explanation of the manner in which his income has been disposed of;

(c) if he has concealed or removed any sum of money, or any debt due to him, goods, merchandise or other movable effects;

(d) if he has made fictitious sales, transactions or donations;

(e) if he has simulated collusive debts between himself and fictitious creditors, by simulated writings or by declaring himself debtor, without consideration or cause, in any public or private act;

(f) if he has concealed or destroyed his books, documents or other papers relating to his accounts.

540. A bankrupt may in the following cases be adjudged a fraudulent bankrupt, unless he sufficiently proves that he had no intent to defraud: Cases where trader may be adjudged a fraudulent bankrupt.

(a) if he has not kept books or if his books do not show the true state of his assets and liabilities;

(b) if, on being lawfully summoned for any meeting which, by the provisions of this Part he is bound to attend, he

fails to attend;

(c) if he has not aided in the making up of the inventory.

Part IV

OF PRESCRIPTION AND INADMISSIBILITY OF ACTION IN CERTAIN COMMERCIAL MATTERS, OF THE JURISDICTION OF THE CIVIL COURT, FIRST HALL, AND OF COMMERCIAL FEES

Title I

OF PRESCRIPTION AND INADMISSIBILITY OF ACTION IN CERTAIN COMMERCIAL MATTERS

Times to be
peremptory.

541. All times fixed by any express provision of this Code for the exercise of any action or right of recourse arising from commercial acts, are peremptory; and the benefit of the *restitutio in integrum* by reason of any title, cause or privilege whatsoever shall not apply.

Actions barred by
the lapse of five
years.

542. Saving the provisions contained in articles 238, 239 and 263, actions arising from bills of exchange or from promissory notes shall be barred by prescription by the lapse of five years from the day of their maturity, and actions arising from drafts or cheques on bankers or cashiers shall be barred by prescription by the lapse of five years from their date.

Actions arising
from bottomry
contracts, etc.

543. Actions arising from contracts of loan on bottomry or from contracts of insurance shall be barred by prescription by the lapse of five years from the day on which the same could have been exercised.

Actions for freight,
etc.

544. The following actions shall be barred by prescription by the lapse of the times stated hereunder:

- (a) actions for payment of freight, by the lapse of one year from the completion of the voyage;
- (b) actions for the payment of victuals supplied to seamen by order of the master, by the lapse of one year from the day of such supply;
- (c) actions for payment of timber and other things necessary for the construction, equipment and provisions of a ship, by the lapse of two years from the date on which such timber or other things have been supplied;
- (d) actions for payment of wages of workmen and for work done, by the lapse of one year from the completion of their work or the delivery of the work;
- (e) actions for the delivery of goods, by the lapse of one year from the arrival of the vessel.

Actions that are
inadmissible.

545. No action shall lie -

- (a) against the master and the insurers for damage occasioned to the goods, if such goods have been received without protest, and the damage was visible;
- (b) against a freighter for average, if the master has delivered the goods and received the freight without making a protest;
- (c) for damages occasioned by collision of vessels when the same happens in a place in which the master could institute proceedings, unless the master made his protest.

546. Save where the law expressly provides otherwise, the prescriptions established in this Code shall run against minors and persons interdicted, saving their right of relief against the tutor or curator.

Prescription to run against minors, etc.

Title II

OF THE JURISDICTION OF THE CIVIL COURT, FIRST HALL

547. Commercial jurisdiction, except for the provisions of Part III, shall be exercised by the Civil Court, First Hall, in accordance with the provisions contained in the [Code of Organization and Civil Procedure](#).

Commercial jurisdiction.
Amended by:
[XXIV.1995.362.](#)
Substituted by:
[XXIII.2022.12.](#)
Cap.12.

548. The following controversies are of a commercial nature:

- (a) all controversies relating to obligations and contracts between traders, unless it appears from the act that the transaction is of a purely civil nature;
- (b) all controversies relating to acts of trade between persons whomsoever.

Controversies of a commercial nature.

549. The Civil Court, First Hall, shall also take cognizance of actions against agents or other persons commissioned by merchants or their subordinates in regard only to transactions carried out in the ordinary course of the business of their principal; and of actions by the former against the principal.

Other matters cognizable by Civil Court, First Hall.
Amended by:
[XXIV.1995.362.](#)
Substituted by:
[XXIII.2022.13.](#)

Title III

OF COMMERCIAL FEES

550. It shall be possible for commercial fees, different from those established in the Schedule hereto, to be agreed between parties. The service provider shall inform his client of the applicable fee or the basis on which the fee is to be determined before the service is provided.

Commercial fees.
Substituted by:
[XXIII.2009.21.](#)

Power of Minister responsible for justice to establish fees.

Amended by:
L.N. 4 of 1963;
XXXI.1966.
[XIII.2008.2.](#)

551. The Minister responsible for justice may, by notice in the Government Gazette, after hearing the Chamber of Commerce, Enterprise and Industry, amend or make additions to the Schedule of fees referred to in the last preceding article.

GENERAL PROVISION

Contrary customs to be inoperative.

552. Any law or custom contrary to or inconsistent with the provisions of this Code shall have no effect.

SCHEDULE
[Articles 550-551]
PART I
(Article 70(3))

Schedules contained in s.1 of Ord.II. of 1898, consolidated.
Amended by:
[XIII.1983.4;](#)
[IX.2003.4;](#)
[L.N. 407 of 2007.](#)

SECONDARY ACTIVITIES OF COMMERCIAL AGENTS

1. The activities of a person as a commercial agent are secondary where it may reasonably be taken that the primary purpose of the arrangement with his principal is other than as set out in paragraph 2 below.
2. An arrangement falls within this paragraph if -
 - (a) the business of the principal is the sale, or as the case may be purchase, of goods or services of a particular kind; and
 - (b) the goods or services concerned are such that -
 - (i) transactions are normally individually negotiated and concluded on a commercial basis, and
 - (ii) procuring a transaction on one occasion is likely to lead to further transactions in those goods or services with that customer on future occasions, or to transactions in those goods or services with other customers in the same geographical area or among the same group of customers, and that accordingly it is in the commercial interests of the principal in developing the market in those goods or services to appoint a representative to such customers with a view to the representative devoting effort, skill and expenditure from his own resources to that end.
3. The following are indications that an arrangement falls within paragraph 2 above, and the absence of any of them is indication to the contrary -
 - (a) the principal is the manufacturer, importer or distributor of the goods;
 - (b) the goods are specifically identified with the principal in the market in question rather than, or to a greater extent than, with any other person;
 - (c) the agent devotes substantially the whole of his time to representative activities (whether for one principal or for a number of principals whose interests are not conflicting);
 - (d) the goods are not normally available in the market in question other than by means of the agent;
 - (e) the arrangement is described as one of commercial agency.
4. The following are indications that an arrangement does not fall within paragraph 2 above -
 - (a) promotional material is supplied direct to potential customers;
 - (b) persons are granted agencies without reference to existing agents in a particular area or in relation to a particular group;
 - (c) customers normally select the goods for themselves and merely place their orders through the agent.
5. The activities of the following categories of persons are presumed, unless

the contrary is established, not to fall within paragraph 2 above -

- Mail order catalogue agents for consumer goods;
- Consumer credit agents.

PART II COMMISSIONS AND FEES

Commissions

On the purchase and sale of goods	
On the purchase of goods with the principal's funds in hand	2%
On the purchase of goods and on the drawing for the value thereof	2 $\frac{1}{8}$ %
On the sale of goods	2%
On attempted sale of goods -	
if the value be above €1,164,69	$\frac{1}{4}$ %
if the value be €1,164,69 or less	$\frac{1}{2}$ %
On the purchase and sale of sailing - or steam-ships (including brokerage), (from each party)	1 $\frac{1}{4}$ %

Banking Transactions

On drawing	$\frac{1}{8}$ to $\frac{1}{4}$ %
On remitting	$\frac{1}{8}$ $\frac{0}{0}$
On accepting	$\frac{1}{8}$ $\frac{0}{0}$
On negotiating	$\frac{1}{8}$ to $\frac{1}{4}$ %
On endorsement of bills of exchange	$\frac{1}{8}$ $\frac{0}{0}$
N.B.- If the drawing and remitting, or the accepting and negotiating refer to the same transaction, the fee is only	$\frac{1}{4}$ %
On the purchase or sale of public funds -	
for funds quoted at above 75% of their nominal value, -	
<i>on the nominal value</i>	$\frac{1}{8}$ $\frac{0}{0}$
for funds quoted at below 75% of their nominal value, -	
<i>on the nominal value</i>	$\frac{1}{16}$ $\frac{0}{0}$
On disbursements to travellers against letters of credit	$\frac{1}{2}$ %
On collection, payment, or negotiating of coupons	$\frac{1}{8}$ $\frac{0}{0}$
On collection of bills of exchange and remittances of the amount ..	$\frac{1}{8}$ $\frac{0}{0}$
On collection of moneys in account current and remittance of proceeds, or payments made on demand	$\frac{1}{8}$ $\frac{0}{0}$
N.B. - The minimum rates above specified in the cases where the rate is not definitely indicated, apply to transactions the amount of which exceeds €232.94	

Sailing-ship or Steamship Agency

To the freighter of a steamship or sailing-ship	2%
To the consignee, on the affreightment of a sailing-ship or steamship, if he procured the affreightment	1%
On freights of importation, as per manifest, both if the freight be payable at the port of destination and if paid in advance	2%

On procuring freights to steamships or sailing-ships for exportation, as per manifest	3%
On disbursements to steamships or sailing-ships	2%
On disbursements to steamships or sailing-ships if under average ..	2½%
On discharging and reloading, or on reshipping of goods on sailing-ship or steamship with or without average, -	
if the value of the goods be under €4658.75	½%
if the value of the goods be above €4658.75	¼%
On transhipment of packages - according to the goods and the number of packages -	
<i>for each package</i>	0.01c to 0.06c
for bales or cases of textiles, -	
<i>for each bale or case</i>	23c
for iron, - <i>per ton</i>	23c
On the sale by public auction of goods or articles landed from sailing-ships or steamships under average	2%
<i>Fees</i>	
For representing one or more persons before courts of justice -	
if the amount in litigation exceeds €2,329.37 -	
in the court of first instance	2%
in the court of second instance	1%
if the amount in litigation is €2,329.37 or less -	
in the court of first instance	3%
in the court of second instance	2%
N.B. - If representation is in second instance only, the fee is -	
if the amount in litigation exceeds €2,329.37	2%
if it is €2,329.37 or less	3%
On deposits in court as security for suits (besides interest at 6% per annum) -	
for a period not longer than one year	3%
for any further period not exceeding one year	2%
On receipt of telegrams for transmission abroad -	
<i>per telegram</i>	58c
On giving orders -	
to steamships, - <i>for each order</i>	1.16c
to sailing-ships, - <i>for each order</i>	58c
On procuring orders, receiving and delivering goods, adjusting accounts, procuring acceptances, or collecting and remitting	3%
for <i>del credere</i> on the sale of goods on credit	2%
On guarantees in favour of any person - <i>per month</i>	¼%
On guarantees in favour of any person, accompanied by a deposit (besides ¼% per month), interest, per annum, of	6%

PART III

FEES OF PUBLIC BROKERS

On the sale and purchase of goods (from each party)	½%
On the sale and purchase of goods of small value, such as pozzolana, soda-ash, firewood, mineral salts, and the like articles (from each party)	1%
N.B. - In the case of goods sold under discount, the brokerage is due on the net amount of the invoice	
On exchange of goods - <i>on the value of every article</i> (from each party)	$\frac{3}{8}\%$
On the purchase and sale of any stock in public funds to bearer - <i>on the real value</i> (from each party)	1%
On the purchase and sale of foreign bills of exchange, discount of bills in the market, and of coupons - <i>on the real value</i> (from each party)	1%
On the purchase and sale of gold and silver bullion, or of State or foreign coins - <i>on the real value</i> (from each party)	½%
On whole or partial affreightment of sailing-ships or steamships - <i>payable by the master</i>	2%
On affreightment of sailing-ships or steamships <i>à la cueillette</i> (ship receiving goods)	3%

PART IV

FEES OF SURVEYORS

L

For a survey on the condition of a sailing-ship or on the condition of the bottom or machinery of a steamship, with or without average -	
for the first survey	4.89
for any further survey	2.45
For a survey on goods -	
if the value does not exceed €232.94	1.22
if the value is above €232.94 but does not exceed €465.87 ...	2.45
if the value is above €465.87 -	
for the first survey	4.89
for any further survey	2.45
For a survey, on board, on condition of the cargo and stowage thereof -	
for the first survey	4.89
for any further survey	2.45

N.B. - All the said fees are due to each surveyor and for attendances within the Grand Harbour or within the Marsamxett Harbour; for attendances outside the said harbours, such fees shall be doubled. The said fees also include the fee for the drawing up of the report, but transport and other expenses incurred by the surveyors in the discharge of their duties, shall be refunded to them, in addition to the fees above specified

If the time employed by the surveyors outside the said two harbours exceeds one day, and their continual attendance should be required beyond that term, - in addition to the expenses incurred, for each day already commenced	12.23
On appraisement of a sailing-ship or steamship, her tackle and apparel, - besides the expenses incurred -	
on the first €1,164.69	1%
on the second €1,164.69	$\frac{3}{4}\%$
on any further sum	$\frac{1}{2}\%$
