

GULF TRANSLATIONS W.L.L.  
Legal Translation Service

THE LAW OF COMMERCE  
NO. 7 OF 1987

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PROMULGATING THE LAW OF COMMERCE

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LEGISLATIVE DECREE NO.7 OF 1987  
PROMULGATING THE LAW OF COMMERCE

We , Isa Bin Sulman Al Khalifa, Amir of the State of Bahrain ,  
having reviewed the Constitution,  
and Amiri Order No.4 of 1975 ,  
and upon the submission of the Minister for Commerce and  
Agriculture,  
and with the consent of the Council of Ministers,  
HAVE HEREBY ENACTED THE FOLLOWING LAW:

Article 1:

The Law of Commerce , which is attached to this Legislative Decree,  
shall come into force; and any provisions inconsistent with the  
provisions hereof shall be repealed.

Article 2:

The Ministers, each in his respective capacity , shall implement the  
provisions of this Law , which shall come into force as of the  
beginning of the month following the elapse of two months from the  
date of its publication in the Official Gazette.

Signed : Isa Bin Sulman Al Khalifa ,  
Amir of the State of Bahrain.

Issued at Rifaa Palace on  
22nd Rajab, 1407 Hijra  
Corresponding 22nd March,1987.

LAW OF COMMERCEPART ONE  
COMMERCE IN GENERALGENERAL PROVISIONSArticle 1:

The provisions of this Law shall apply to traders, as well as to all commercial activities undertaken by any person even though he is not a trader.

Article 2:

- (1) Commercial transactions shall be subject to what has been mutually agreed upon by the contracting parties unless their agreement conflicts with mandatory legal provisions.
- (2) Unless there is a special agreement, the rules of commercial practice shall be applicable to the matters which are not specifically dealt with in this Law or in the other laws pertaining to commercial provisions. Special or local practices shall supersede general custom and usage.
- (3) Unless there is a commercial practice, the laws containing civil provisions shall be applicable unless a judge deduces the grounds for his judgement from the principles of Islamic Shariaa, then principles of natural law and rules of equity.

CHAPTER ONECOMMERCIAL ACTIVITIESArticle 3:

Commercial activities are such activities which are carried on by any person, even though he is not a trader, with the intent to speculate. The following activities shall, in particular, be deemed as commercial activities:

- (1) Purchase of movables of whatever kind with the intent to sell or hire them out in their original form or after procession or conversion thereof in any other manner with the intent to make profit.

- (2) Sale or hire of the movables already purchased in the manner set forth in the preceding Paragraph.
- (3) Taking movables on lease with the intent to hire them out or subleasing them to third parties.
- (4) All transactions relating to bills of exchange, promissory notes and cheques regardless of the capacity of the persons concerned and whatever may be the nature of the transactions for which they are executed.
- (5) Setting up of commercial companies.

Article 4:

All activities relating to maritime navigation, including sea or air transport, shall be deemed to be commercial activities, especially :

- (1) Construction, repair or maintenance of ships or aircraft.
- (2) Purchase, sale, charter or taking on charter of ships and aircraft with the intent to exploiting them.
- (3) Purchase of materials or equipment for providing ships or aircraft with the necessary supplies.
- (4) Sea or maritime transport.
- (5) Loading and unloading operations.
- (6) Contracts relating to the employment of ship masters, pilots, engineers, navigators and such other employees.
- (7) Lending and borrowing.

Article 5:

The following shall be commercial activities so long as they are undertaken as an occupation:

- (1) Supply, export and distribution of goods.
- (2) Industry .
- (3) Land transport.

- (4) Commercial agencies, business of commission agents and commercial representation.
- (5) Brokerage of whatever kind.
- (6) Insurance business of various kinds.
- (7) Operations of banks, exchange houses and stock exchanges.
- (8) Warehousing of goods, crops and such other items.
- (9) Printing , publishing, photography, broadcasting by radio or television, press, transmission of news or photographs and advertising business.
- (10) Extraction of natural resource materials from mines, quarries and oil sources, cutting stones and such other activities.
- (11) Contracts relating to public works, contracts for construction of properties, altering , renovating or demolishing them, cleaning and maintenance contracts where the contractors undertakes to provide the necessary materials or workforce.
- (12) Purchase of properties and real estate rights with the intent to sell them and the sale of the above after having purchased them with the aforesaid intent.
- (13) Customs clearing, service agencies and business for the sale by public auction.
- (14) Business of tourist agencies, hotel industry, business of hotels, restaurants, cinema houses, playgrounds and recreational activities.
- (15) Leasing or letting of houses, apartments and rooms whether furnished or unfurnished with the intent to sub-let them.
- (16) Distribution of water, gas or electricity and communication services.



Article 6:

All activities which are relevant to or facilitate the activities referred to in the preceding Articles, as well as all activities carried on in connection with the activities indicated in the preceding Articles, shall also be deemed to be commercial activities owing to the similarity of their characteristics and objects.

Article 7:

- (1) Activities undertaken by a trader for the affairs relating to his trade shall be deemed as commercial activities.
- (2) Every activity carried on by a trader shall be deemed relevant to his business unless the contrary is proved.

Article 8:

- (1) An artwork made and sold by an artist shall not, regardless of whether made by him personally, or by using the services of workers be deemed to be a commercial activity.
- (2) Similarly, where an author prints and sells his work, it shall not be deemed as a commercial activity.
- (3) The sale by a farmer of the produce obtained from his own land or land cultivated by him shall not be deemed as a commercial activity.
- (4) However, if a farmer transforms the produce of the cultivated land and uses for this purpose major power for operating the equipment or a small number of worker or sets up on a permanent basis a store or factory for the sale of his produce in its original state or after transformation thereof, the sale in such case shall be deemed as a commercial activity.

CHAPTER TWO

TRADERS

Article 9:

Any of the following shall be considered as a trader:

- (1) Every person having commercial qualifications who carries on commercial activities in his own name and for his own account.
- (2) Every company taking one of the forms provided for in the Commercial Companies Law whatever may be the objects thereof.

Article 10:

Every Bahraini who is 18 years of age without being barred by a legal restriction relating to his person or the type of commercial transaction he is undertaking, shall be qualified to engage in commerce.

Article 11:

- (1) Where a minor or distrained person has funds in a business, the Court may order the liquidation of his funds and withdrawal from the said business or his continuation to carry on with the business, as may be conducive to the realisation of the interest of such a person.
- (2) Where the Court orders the continuation to carry on with the business it may grant the person acting for the minor a general or restricted authorisation to carry on all the relevant business activities.
- (3) A minor or distrained person shall be only liable to the extent of his funds which are invested in such business; and he may be declared bankrupt. However, the bankruptcy shall not include funds which are not invested in the business nor shall it have any effect with regard to the person of such minor or distrained person.

Article 12:

Where serious causes have arisen giving grounds for fearing mismanagement by the person in charge of managing the funds of a minor or distrained person, the Court may withdraw the delegation of powers stipulated in the preceding Article, without prejudice to such rights as have been acquired by third parties in good faith.

Article 13:

Every order issued by the Court whether for continuing the carrying on of the business of a minor or distrained person, the withdrawal of the authorisation to continue carrying on business or restricting such authorisation, shall be registered in the Commercial Registry and be published in the Official Gazette.

Article 14:

- (1) The qualification of a married foreign woman to engage in commerce shall be regulated by the law of the country of which she is a national.

- (2) A foreign woman who takes up trade as an occupation shall be presumed to be carrying on such business with the permission of her husband. Should the applicable law authorises a husband to oppose the carrying on of trade by his wife, or if the husband withdraws his previous permission, his objection or withdrawal of the permission shall be recorded in the Commercial Registry and shall be published in a local newspaper.
- (3) The objection or withdrawal shall have no effect except from the date of the occurrence of such publication.
- (4) An objection or withdrawing the permission shall not affect rights acquired by bona fide third parties.

Article 15:

- (1) It shall be assumed that a foreign wife got married according to the separation of property status, unless the financial agreement between the spouses otherwise provides.
- (2) A financial agreement between the spouses shall not be valid towards third parties except from the date of publication following registration in the Commercial Registry and publishing a summary thereof in the Official Gazette.
- (3) In case of neglecting the publication procedures set forth in the preceding paragraph, a third party may prove that the marriage has taken place according to a financial arrangement than that of the separation of property status which is more appropriate for his interest.
- (4) A judgement passed by a non-Bahraini court ordering the separation of the spouses shall not be valid towards third parties except from the date of entering such judgement in the Commercial registry and publishing the summary thereof in the Official Gazette.

Article 16:

- (1) Without prejudice to the provisions of the Commercial Companies Law, a non-Bahraini shall not carry on business in Bahrain unless he has a Bahraini partner holding at least 51% of the share capital.

- (2) Non-Bahraini traders whose names are registered in the Commercial Registry on the effective date of this Law shall be given a two-year grace period for settling their business affairs in compliance with the provisions of the first Paragraph of this Article, otherwise their names shall be struck off the Commercial Registry.

The provisions of the preceding Paragraph shall not apply to GCC nationals engaged in trade on the effective date of this Law, and they shall have the right to engage in trade without the requirement to have a Bahraini partner.

Article 17:

- (1) The provisions of this Law shall not apply to small craftsmen.
- (2) Small craftsmen shall be defined as every person who is engaged in an occupation that requires modest overheads and uses his physical activity or machines that require a limited mechanical power or a small number of workers to gain a certain income in order to secure his daily livelihood.

Such small crafts shall be determined by an order of the Minister for Commerce and Agriculture.

Article 18:

- (1) A person shall be assumed as a trader if he makes an announcement through newspapers, publications, printed matter or such other media. This presumption may be contested by proving that the person who assumes such a capacity has not actually taken up trade as an occupation.
- (2) The capacity of being a trader shall be proved for every person who takes up such business under a false name or by being disguised behind another person, in addition to being obvious to an ordinary person.
- (3) If business is taken up by one of the persons prohibited from engaging in trade in accordance with special laws, rules or regulations, he shall be deemed as a trader and shall become subject to the provisions of this Law.

Article 19:

- (1) Government ministries, the Municipality, societies and clubs shall not be deemed as traders. However, commercial transactions concluded by such organisations shall be subject to the provisions of the Law on Commerce.
- (2) The capacity of being a trader shall be proved for the companies established or acquired by the State; and the same shall be applicable to public organisations and institutions that principally carry on commercial activities and to organisations belonging to a foreign country and engaged in commercial activities in Bahrain. All these organisations shall be subject to the provisions applicable to traders, unless the Law otherwise provides.

CHAPTER THREE  
COMMERCIAL BOOKS

Article 20:

- (1) Every trader whose capital exceeds BD 10,000, whether an individual or a company, shall maintain such commercial books requisite for the nature and importance of his trade, in such manner as to show the financial position, his rights and the obligations arising against him in connection with his trade.

Traders shall be given a five-year period commencing from the effective date of this Law after which they shall be compelled to make entries in such books in the Arabic language.

- (2) In all cases, a trader shall maintain at least the following two books:
  - (a) Basic journal book.
  - (b) General ledger.
- (3) Subject to the approval of the Council of Ministers, the Minister for Commerce and Agriculture may issue an order providing for a transitional period commencing from the effective date of this Law so that during this period traders shall not be obliged to maintain commercial books. Further, he may extend such period and he shall also be empowered to make any determination of the capital of a trader who shall be exempted from maintaining commercial books.

- (4) Meanwhile, the Minister for Commerce and Agriculture may subject to the approval of the Cabinet exempt by an order to be issued by him such companies, firms and banks to be specified by him from the requirement to maintain commercial books if they are using computers in maintaining their accounts. The order issued in this respect shall govern the rules and procedures ensuring the accuracy and correctness of the data recorded in the computer.

Article 21:

- (1) A trader shall record in the journal book all the financial transactions undertaken by him as well as the personal withdrawals made by him. Such entries shall be made on a daily basis and in detail, save for personal withdrawals which may be recorded together in every month.
- (2) A trader may use journal books to assist him in recording details of various items of commercial transactions. In such case, it shall be sufficient to record the totals of these transactions in the basic journal book on a regular basis by relying upon the details of the ancillary journal books. If this procedure is not followed, every ancillary journal book shall be deemed as a basic journal book.

Article 22:

- (1) There shall be entered in the general ledger all the accounting operations extracted from the journal book on the basis of the supporting documents, particularly the accounts relating to the cash and bank funds, partners, creditors, debtors, earnings, expenses and withdrawals.
- (2) A trader shall at the end of every period of time record the accounts referred to in the preceding Paragraph for the purpose of making a trial balance, making the necessary stock-taking and prepare the final accounts for the balance sheet.

Article 23:

- (1) A trader shall maintain true and original copies of all the correspondence, telegrams and other documents relating to his trade whether those sent or received by him.
- (2) Filing shall be made in an organised manner facilitating reference thereto.

Article 24

- (1) Commercial books shall not contain any blanks, deletions, striking off, insertions between the lines or writing on the margins.
- (2) Before using the two books mentioned in Article 20 Second Paragraph, each page of the books shall be numbered and each page shall be signed by the person designated for this purpose by an order of the Minister for Commerce and Agriculture by an order therefrom, and the seal of the concerned directorate shall be stamped thereof after indicating the number of pages of the book.
- (3) If the pages of either of the two books have been filled up, a trader shall present it to the Ministry of Commerce and Agriculture to make an entry thereon to that effect prior to using a new book. In addition, he shall have to present the said book at the end of every financial year to the Ministry of Commerce and Agriculture for verifying the number of pages used during the year.
- (4) In case of the cessation of the operations of the business, a trader or his heirs shall produce the aforesaid two books to the Ministry of Commerce and Agriculture to make an entry thereon to this effect.
- (5) The signature and the entries to be made in the foregoing events shall be effected without payment of fees.

Subject to the approval of the Council of Ministers, the Minister for Commerce and Agriculture may issue an order for the cessation of enforcing Clauses (2) and (3) for a specific period or for successive periods, as necessary.

Article 25

- (1) A trader or his heirs shall maintain the commercial books and the documents supporting the entries made therein for a period of ten years commencing from the date of making the entry regarding the closing of such books.
- (2) They shall also maintain the correspondence and telegrams for a period of five years commencing from the date of despatch or receipt thereof.
- (3) Banks and companies designated by an order of the Minister for Commerce and Agriculture shall maintain during the period indicated in the preceding two Paragraphs microfilms of the documents instead of keeping the original documents. Nevertheless, the original copies of such documents shall be maintained for a period of no less than two years. In this case, microfilm copies shall be as admitted in evidence exactly as the original documents.

Article 26

- (1) Entries made in the commercial books by the authorised employees of a trader shall be considered as though they are entries made by the trader himself.
- (2) For the entries made in the books of a trader, they shall be presumed to have been made with his knowledge and consent unless the opposite is proved.

Article 27

The court may, when hearing a case, order of its own initiative or at the request of one of the litigants resolve that the books be submitted in order to examine the matters relating to the dispute referred thereto .

The court may undertake the examination of the books by itself or through an expert to be nominated for this purpose.

Article 28

- (1) The court may not, upon hearing a case, order a trader to surrender his books and documents relating thereto to enable his opponent to have access thereto except in the disputes relating to estates, companies and division of common property.
- (2) In case of bankruptcy or composition, the books shall be delivered to the court, receiver or composition officer.

Article 29

The court may when hearing a case order searching the trader's premises to ascertain whether or not he maintains commercial books.

Article 30

Where a trader refuses to surrender his books for inspection , the court shall consider his act as a presumption of the validity of the facts required to be proved from the books and to ask his opponent to take the suppletory oath.

Article 31

- (1) Failure to maintain the books provided for in Article 20 or not to comply with the provisions relating to maintaining them shall be punishable by a fine of no less than BD 100 and no more than BD 1,000.



- (2) The officers designated by an order of the Minister for Commerce and Agriculture shall have the power of entering business premises to ascertain that they maintain the commercial books referred to in Article 20 of this Law and that they have complied with the provisions governing them. In case of a violation, they shall have the power to prepare the necessary statements in this respect.

#### CHAPTER FOUR

#### BUSINESS PREMISES, TRADE NAME, UNFAIR COMPETITION AND COMMERCIAL STATEMENTS

#### SECTION ONE

#### PREMISES AND DISPOSING THEREOF

#### Article 32

- (1) Business premises are the trader's premises and the rights pertaining thereto.
- (2) Business premises comprise a group of material and non-material elements, which vary according to the circumstances; they are, in particular: the goods, business furniture, industrial machinery, contacts with customers, goodwill, trade name, right to lease out property, trade marks and descriptions, patents, licences, drawings and signs.

#### Article 33

If a contracting party fails to state the elements comprising the premises subject to the contract, it shall comprise, in addition to contacts with customers and goodwill, every material or intangible element that may be necessary to benefit therefrom in the manner intended by the two contracting parties.

#### Article 34

A disposal of the premises shall not be inclusive of the property where the premises are located, and every condition to the contrary shall be deemed null and void.

Article 35

Every conveyance involving the transfer of the ownership of the premises or creating a real right towards it shall be evidenced by a contract executed before the Notary Public.

Every conveyance transferring the ownership of the premises or creating a real right towards it that is not legalised before the Notary Public, shall not be effective towards the contracting party nor towards third parties.

Article 36

1. A conveyance involving the premises shall be recorded in a special register to be maintained at the Commercial Registry, which register shall be regulated by an order of the Minister for Commerce and Agriculture.
2. A person making such a conveyance shall, upon applying for registration, produce an official copy of the contract subject to the transaction accompanied by two copies of a docket of documents containing the particulars of the contract, particularly the following:
  - a) Name of the party making the conveyance, his surname, nationality, occupation and domicile.
  - b) Name of the party in whose favour the conveyance is made, his surname, nationality, occupation and domicile.
  - c) Location of the premises, objects, branches belonging thereto if any and specifying the parts of which they are made and affected by the conveyance.
  - d) Where the conveyance is a sale, there shall be mentioned the sale price for the fixtures, goods and material and non-material elements of the premises, a statement of whether the vendor has maintained for himself the vendor's concessionary right or cancelled the sale.
  - e) The name of the lessor, lease term, annual rental and dates on which the rent is payable.
  - f) Name of the company with which an insurance is taken against fire and other risks.

3. In addition, a summary of the conveyance shall be published in one of the local newspapers containing the following details:
  - a) Names and addresses of the contracting parties.
  - b) Date of the conveyance, type thereof and rights and obligations arising therefrom.
  - c) Type of premises, address and elements that the two contracting parties have agreed to be comprised in the conveyance.
  - d) Price of the premises if the conveyance is a sale and the manner of payment of the balance of the price.
4. Transfer of ownership of the premises shall not be valid towards the contracting parties or third parties except from the date of recording the conveyance in the special register kept for this purpose and publishing a summary thereof in one of the local newspapers.

#### Article 37

If the conveyance involving the premises comprises elements subject to special rules of publication or registration such as trade marks and similar items, the registration of the conveyance and publication in respect thereof according to Article 36 of this Law shall not substitute registration and publication in respect of such elements according to the law governing them.

#### Article 38

1. A disposal of the premises shall be applicable to all the rights and obligations relating thereto unless the opposite is agreed upon, in which event the party making the conveyance shall be jointly liable with the party in whose favour the conveyance is made with regard to such obligations.
2. The party in whose favour a conveyance is made shall fix a date for the former creditors prior to the date of publishing the summary of the conveyance with a view to settling the debts owed thereto. Publication shall take place in one of the local newspapers and the period thereof shall not be less than 60 days from the date of publication.
3. The party in whose favour a conveyance is made shall be discharged of liability for debts owed to persons failing to give notice thereof by registered letters with delivery notes within the period specified in the preceding Paragraph and the party making the conveyance shall be solely liable for such debts.

Article 39

1. Making an entry in the Register shall secure the vendor's benefit for a period of two years from the date of registration . Such entry shall be deemed cancelled where it is not renewed during the aforesaid period.
2. In the event of moving the premises, an entry shall be made in the margin of the Register showing the new address of the premises.

Article 40

Notwithstanding the provisions relating to bankruptcy, a vendor of the premises who has not received the full price may have recourse against the body of creditors in the purchaser's bankruptcy proceedings and recovering the premises subject to the sale or his right to the benefit thereof if he has maintained his right to annulment or the vendor's benefit and should the sale contract have fulfilled the procedures provided for in Articles 35 and 36 of this Law. An annulment or benefit shall only be applicable to the elements comprised therein.

Article 41

- (1) A vendor who brings a suit for annulment shall serve notice on such creditors who have entries made against the premises at their elected domiciles shown in the entries.
- (2) Where the vendor at the time of the sale makes it a condition that the sale becomes null and void by the operation of the law if the price is not paid at the appointed time, or where both the vendor and purchaser agree to cancel the sale, the vendor shall serve a notice of cancellation or the agreement of cancellation (as the case may be) on the registered creditors at their elected domiciles.

Article 42

- (1) The benefit of the vendor shall be struck off if this is mutually agreed upon between the contracting parties or if the purchaser settles the remainder of the price and related amounts due.
- (2) The striking off shall be made by making an entry in the margin of the Register.

Article 43

Premises may be mortgaged. Where the mortgage deed does not specify the elements covered by the mortgage, it shall only be applicable to the trade name, right to the lease, contacts with customers and goodwill.

Article 44

- (1) A mortgage deed may only be effected by an official instrument in writing executed before the Notary Public, otherwise it shall be null and void.
- (2) A mortgage deed shall contain a declaration by the debtor as to whether or not the vendor has a lien over the premises as well as the name of the company which insured the premises against fire, if any.

Article 45

- (1) A mortgage deed over the premises shall be concluded by registering it with the Commercial Registry.
- (2) Such registration shall secure a privilege right for five years from the date thereof. Where registration is not renewed within the said time limit, it shall be deemed to have been cancelled.
- (3) The said entry shall be struck off by mutual consent of the parties concerned or pursuant to a final court judgement.

Article 46

A mortgagor shall be liable for maintaining the mortgaged premises in a good condition.

Article 47

The provisions set forth in the Civil and Commercial Procedures Act shall be enforced in the event of non-payment of the balance of the price for the sale of the premises.

Article 48

The vendor, as well as the mortgagees, shall have the same rights and privileges over the sums arising from the security as those which they had over the sold and secured items if the said sums arise from the same rights and privileges belonging thereto from such items

Article 49

The lessor of the place wherein lies the mortgaged furniture and equipment which are used for exploiting the business premises may not exercise his privilege right for more than two years.

SECTION TWO

TRADE NAME

Article 50

Without prejudice to the provisions set forth in the Commercial Registration Law promulgated by Amiri Decree No.(1) Finance of 1961, as amended, a trade name shall be subject to the provisions contained in the following Articles.

Article 51

- (1) A trade name is made up of the trader's name and surname. It must be clearly different from names already registered.
- (2) A trade name may contain particulars pertaining to the persons therein mentioned, if relevant to the kind of trade for which it is designated. However, it may contain an innovated name.

In all cases, a trade name shall conform to the facts, otherwise it will be misleading or may prejudice the best interest of the public.

Article 52

- (1) A trade name shall be entered in the Commercial Registry in accordance with the provisions of the Commercial Registration Law promulgated by Amiri Decree No.(1) Finance of 1961 , as amended.
- (2) When a trade name has been registered no other trader may use the said name for the kind of trade undertaken by him.
- (3) Where the name and surname of the trader are similar to the trade name entered in the Registry, he must add to his name such particulars as will distinguish him from the trade name already registered.

Article 53

A trader shall carry on his business activities and sign the relevant documents under his trade name. He shall display the said trade name at the entrance of his business premises.

Article 54

A trade name may not be disposed of independently of the business premises; but the disposal of the business premises by the owner does not include the disposal of the trade name, save where otherwise provided expressly or implicitly.

Article 55

- (1) A person to whom the ownership of business premises is transferred, may not use the trade name of his predecessor, unless such name devolves unto him or the predecessor authorises him to use it. In any case, the assignee shall add to the said trade name such particulars purporting the transfer of ownership.
- (2) Where the predecessor agrees to the use of the original trade name without any additions, he shall be liable for such obligations as are concluded by the successor under the said name, if the successor fails to perform the said obligations.

Article 56

- (1) Any person who owns a trade name belonging to business premises shall subrogate his predecessor in all obligations and rights that devolved under the said trade name. Any agreement to the contrary shall not be effective towards third parties unless it has been registered in the Commercial Registry or the interested parties have been advised of the same.
- (2) The liability for the predecessor's obligations shall lapse after five years from the date of transferring the ownership of the business premises.

Article 57

A person to whom the ownership of business premises has been transferred without its trade name, shall not be liable for his predecessor's obligations, unless an agreement to the contrary has been concluded and entered in the Commercial Registry.

Article 58

- (1) Trade names of companies shall be in compliance with the relevant legal provisions.
- (2) A company may maintain its earlier trade name without alteration if a new partner joins the Company or if a partner leaves a company while the trade name thereof includes his name, so long as this particular partner or his heirs have agreed to keeping it in the trade name.

SECTION THREE

UNFAIR COMPETITION

Article 59

- (1) Where a trade name is used by a person other than its owner, or where the owner uses it in a manner contravening the Law, interested parties may apply for an order banning its use and may also apply for having it struck off the Commercial Registry if it is already registered. They may further claim damages, if relevant.
- (2) These provisions shall apply to the use of trade marks and descriptions in the manner provided for in this Law.

Article 60

A trader shall not resort to fraud and cheating when marketing his goods, nor shall he disseminate false information that is likely to have damaging effects on the interests of another trader competing with him, otherwise he shall be liable for damages.

Article 61

A trader shall not disseminate matters that are inconsistent with the truth as regards the origin or description of his goods or the importance of his trade, nor shall he falsely declare that he holds a degree, certificate or award nor may he resort to any other misleading methods with the intent of attracting the customers of a competitor trader, otherwise he shall be liable for damages.

Article 62

A trader may not induce the workers or employees of another trader to assist him in attracting the customers of such other trader or to leave their employer's service to work in his employ with a view to allowing him to learn the secrets of his competitor.

The foregoing acts shall be deemed as unfair competition necessitating damages.

Article 63

Where a trader issues to an ex-employee or worker a certificate of good conduct contrary to the truth, which misled and caused damages to another bona fide trader, the latter may, according to circumstances and conditions, have recourse against the former for fair damages.



Article 64

Any person , engaged in the business of supplying information to commercial houses about the conditions of traders, who knowingly or through gross negligence supplies untrue statements about the behaviour or financial standing of a trader, shall be liable for payment of damages for the consequences arising from his fault.

SECTION FOUR

TRADE DESCRIPTIONS

Article 65

A trade description is any explanation relating directly or indirectly to the following:

- (i) the number , quantity, measurements, size, weight or capacity of the goods.
- (ii) place or country wherein the goods have been manufactured or produced.
- (iii) the method of manufacture or production.
- (iv) the component parts thereof.
- (v) the name or description of the producer or manufacturer.
- (vi) the existence of patents or such other rights of industrial ownership , or any concessions, prizes or trade or industrial privileges.
- (vii) the name or form by which the goods are known or classified.

Article 66

A trade description shall conform to the truth in all respects regardless of whether it is displayed on the products, premises, stores or their names or on the wrappers, invoices, letters, advertising materials or such other things that are used for providing the goods to the public.

Article 67

- (1) The name or trade name of the vendor may not be displayed on products imported from a country other than that where the sale is effected, unless it is accompanied by a precise statement written in bold characters regarding the country or place wherein the products are produced or manufactured.
- (2) Residents of a locality famous for producing or manufacturing certain products, who deal in similar products imported from other localities, may not display their marks thereon if they tend to mislead the public regarding the origin of such products, even where the marks do not contain the names or addresses of such persons, unless precautions have been taken to avoid any confusion.

Article 68

A manufacturer may not use the name of the locality wherein he has a principal factory on products manufactured for him at another locality unless such name includes a statement giving the name of the latter locality in a manner which prevents any confusion.

Article 69

- (1) Prizes, medals, diplomas or honorary degrees of any kind whatsoever may not be mentioned except with regard to products entitled thereto and to persons and trade names to whom they are awarded, or to persons to whom the rights to the foregoing have passed provided an accurate statement is given regarding the dates, kinds and fairs or contests where they were granted.
- (2) Any person who participates with others in exhibiting products in fairs may not use, on his own products, the awards granted to the common products on show, unless he shows clearly the origin and kind of such awards.

Article 70

- (1) Where the quantity, measurements, weight, capacity, size, origin or the component parts of the products, are of the elements having a bearing on their evaluation, the Minister for Commerce and Agriculture may issue an order prohibiting the import, sale or offering for sale of such products unless they carry one or more of the foregoing particulars.

- (2) An order of the Minister for Commerce and Agriculture shall lay down the manner of displaying the particulars on the products, and where this is not feasible, the alternative procedures, provided that such particulars shall be written in Arabic.

#### Article 71

A prison sentence and a fine not exceeding BD 500, or either penalty, shall be inflicted upon any mala fide violator of the provisions of Articles 65 to 70 with regard to trade descriptions.

### CHAPTER FIVE

#### COMMERCIAL OBLIGATIONS

##### General Provisions

#### Article 72

If a contract is of a commercial nature with respect to a contracting party, all the persons concerned therewith shall be subject to the provisions of the Law of Commerce unless the Law otherwise provides.

#### Article 73

1. Persons who assume together a commercial debt shall be jointly liable for the said debt, unless otherwise provided by the law or agreement.
2. This provision shall be applicable where there are several guarantors of a commercial debt.

#### Article 74

- (1) A guarantee shall be commercial where a guarantor has guaranteed a debt which is deemed with regard to the debtor to be commercial.
- (2) A guarantee shall be evidenced in the manner whereby the original obligation is established.
- (3) A commercial guarantee may not provide for the guarantor, even though he is not jointly liable, to disqualify the debtor unless otherwise agreed upon.

Article 75

Where a trader carries on for a third party such business or services as are relevant to his commercial activities, he shall be deemed to have done so against consideration, save where the contrary is established. Such consideration shall be determined according to the prevailing practice in the absence of which the Court shall do so.

Article 76

- (1) A loan shall be deemed to be commercial if it is concluded by a trader for the sake of his business affairs.
- (2) It shall be assumed that the contracting parties have agreed to an interest clause for such loan unless it is proved that they had a contrary intention.
- (3) Where the business of a trader requires granting loans for his business customers or others or payment of amounts or expenses for their account, he may claim interest from the date of payment unless otherwise agreed upon.
- (4) Interest shall be charged at the legally applicable rate unless another rate is agreed upon, provided that such rate shall not exceed the legally prescribed level.
- (5) The Bahrain Monetary Agency shall, by a notice issued therefrom, determine the legally prescribed rate and the maximum rate of interest stipulated in the foregoing Paragraph.
- (6) Interest shall be paid at the end of every year if the debt is deferred for more than one year and on maturity date if the term thereof is one year or less unless there is agreement or practice to the contrary.

Article 77

- (1) Claims and authorisations issued by a trader with regard to his business affairs shall not lapse upon his death.
- (2) However, his heirs may revoke them should they decide not to continue in business. In this event, they shall not be obliged to pay any compensation to a party who has entered into contract with their testator if their notice to him with regard to revocation has been given at an appropriate time.

Article 78

If a certain date has been fixed for the coming into effect of a contract and where such date expires without enforcement thereof by the debtor, then a creditor shall not be compelled to accept enforcement.

Article 79

If one of the contracting parties maintains the right to terminate a contract, his performance of his obligations under the contract or his agreement to performance of the other party's obligations shall deprive him of the right to terminate the said contract.

Article 80

A notice or warning with respect to commercial matters shall be served by a registered letter or by registered mail with a delivery note.

In cases of emergencies, a notice or a warning may be served with a telegram or a similar method.

For the provisions of Article 81 of the Law of Commerce promulgated by Legislative Decree No.7 of 1987, as amended by Legislative Decree No.15 of 1991, there shall be substituted the following:

"Article 81

1. Interest for delay of settlement of commercial debts shall accrue upon maturity unless the Law or an agreement stipulates otherwise.
2. In no case shall the total interest payments charged by the creditor be in excess of the principal debt amount on the basis of which interest has been charged in the case of debts the re-payment period of which exceeds seven years. Every agreement to the contrary shall be null and void.
3. The provision of paragraph 2 shall not be applicable to interest for debts arising from transactions concluded in a foreign currency.
4. A creditor shall have the right to claim supplementary damages to be added to the delay interest without the need for proving that the damages in excess of such interest have been caused by the debtor's deceit or gross failure."

Article 82

Settlement of a commercial debt takes place if a person holds a debt instrument showing a discharge signed by the creditor or if a person has a valid discharge issued by a creditor or his representative releasing the payer from liability, unless the creditor proves that the debtor has not conducted the usual investigations to ascertain the validity of the settlement.

Article 83

- (1) Every instrument the subject of which is the payment of a certain sum of money or delivery of goods may be negotiated by way of endorsement if it is made to the order of the creditor or by way of delivery if it is made for the holder.
- (2) Endorsement or delivery shall result in transferring all the rights arising from the instrument to the new holder.
- (3) In case of endorsement, the endorser shall guarantee settlement of the right established in the instrument on maturity date unless it is mutually agreed to restrict the guarantee to the existence of the right at the time of endorsement.
- (4) If an instrument is created in the event of concluding a commercial transaction, the signatories thereto shall be jointly liable therefor unless otherwise agreed upon.
- (5) In all cases, a debtor shall not have recourse against the holder of the instrument with the defences based upon personal relationships with the person who has issued the instrument or the former holders thereof, unless it is the intention of the holder at the time of obtaining it to cause damage to the debtor or if the defence relates to the debtor's lack of legal qualifications.
- (6) A debtor may refuse to settle the value of the instrument unless it is delivered thereto carrying a discharge of his liability.

Article 84

A debtor's possession of the debt instrument shall be a presumption of discharging him of liability unless the contrary is proved.

Article 85

The loss of the instruments referred to in Article 83 shall be subject to the provisions relating to the loss of commercial papers or destruction thereof unless the Law otherwise provides.

Article 86

- (1) Commercial obligations whatever may be the value thereof may be evidenced by all methods of proof unless the Law otherwise provides.

- (2) Save for the events where the Law requires proof by an instrument in writing with respect to commercial matters, it is possible in such matters to prove the contrary of the contents of a written evidence or to prove what is beyond such evidence by all methods.

#### Article 87

- (1) In commercial matters the obligations of traders concerning their business activities towards each other shall lapse after ten years from the date on which the performance of an obligation falls due, save where the law provides for a shorter period.
- (2) Final judgements passed in respect of traders law-suits towards each other and relating to their business activities shall lapse after a period of ten years.

#### Article 88

Written instruments in private form with respect to commercial matters shall be deemed as evidence towards third parties on the date thereof even though such date is not confirmed unless the law requires that the date be shown.

The date of a written instrument in private form shall be deemed correct until the contrary is proved.

#### Article 89

Commercial books may be admitted in evidence in the legal actions brought by or against traders so long as they relate to their business activities in accordance with the following rules:

- (1) Entries recorded in the books shall, even though such books are not properly maintained, be deemed as evidence of the owner of such books. However, it is not permissible for someone wishing to extract from such books an evidence for his benefit to take extracts from the entries recorded therein.
- (2) Entries made in the properly maintained books according to the provisions of the Law shall be relied upon for the benefit of the trader who maintains them against an opponent who is a trader, unless they are challenged by the latter by relying upon the entries contained in the proper books maintained by him or if he proves that they are not proper by producing a proof to the contrary.

- (3) If a comparison between the proper books of the two opponents maintained according to the Law results in establishing a contradiction in evidence, the Court may request another evidence.
- (4) If there are discrepancies in the details contained in the books of the two opponents and should the books of either be proper while those of the other are found to be improper, recognition shall be given to the properly maintained books of the trader, unless his opponent produces evidence to the contrary.

#### Article 90

If the Court resolves to admit the contents of commercial books, it shall ask the owner of such books to take the oath as to the correctness of the particulars that it wishes to admit and to the continuation of the obligation as being owed by the debtor.

#### Article 91

The Minister for Commerce and Agriculture may, subject to the consent of the Council of Ministers, issue an order whereby financial institutions shall be exempted from the enforcement of any of the provisions contained in this Part.

### PART TWO

#### DEFINED COMMERCIAL CONTRACTS

##### CHAPTER ONE

#### COMMERCIAL SALES

##### Section One

##### General Provisions

#### Article 92

The provisions of this Chapter shall only be applicable to the sales concluded by traders with each other for purposes relating to business unless the Law otherwise provides.

#### Article 93

A sale is a contract whereby a vendor is obliged to transfer the ownership of a property in consideration of a cash price. Should the consideration be in cash and in kind, it shall be vital for considering such contract a sale that the cash consideration be greater than that in kind.



Article 94

- (1) A purchaser shall be adequately aware of the sold items, and his awareness shall be deemed sufficient if the contract comprises the description of the sold items and the basic characteristics thereof in a manner enabling its easy identification.
- (2) If it is mentioned in the sale contract that the purchaser is aware of the sold items, he shall forfeit his right to claiming the invalidation of the sale on the ground of his non-knowledge unless he can prove that the vendor has acted fraudulently.

Article 95

- (1) Where it is agreed that the purchaser may fix the form, size or other distinguishing features of the item sold, the purchaser shall do so within a reasonable period failing which, the vendor may apply for recession and compensation.
- (2) After the lapse of the aforementioned time limit, the vendor may determine such feature. Such determination shall be final, if the purchaser does not object to it within a reasonable period of time of the date on which is served on him.

Article 96

- (1) Where the sale is subject to a particular "specimen", the sold item shall conform thereto.
- (2) If the "specimen" is damaged or destroyed in the hands of one of the contracting parties, even without any fault of his, such contracting party whether he is a vendor or purchaser shall prove that the item is identical or unidentical to the specimen.

Article 97

- (1) In the sale on a trial basis, a purchaser may accept or reject the sold item, and the vendor shall enable him to try the product. Should the purchaser refuse to accept the sold item, he shall declare the refusal within the mutually agreed period. However, if there is no agreement as to such period, the refusal shall be made within a reasonable period to be determined by the vendor. If this period expires and the purchaser remains silent while being able to try the sold item, his silence shall be deemed as acceptance.
- (2) A sale on a trial basis shall be conditional upon the acceptance of the sold item, unless it is established from the sale or the circumstances thereof that the sale is dependent upon a cancellation condition.

Article 98

Where a sale is conditional upon tasting the item, a purchaser may accept the sold item if he wishes, but he has to declare such acceptance within the period determined by the mutual agreement or custom and usage. A sale shall be deemed to have been concluded from the time on which such declaration is made.

Article 99

- (1) The assessment of the price may be limited to stating the principles upon which it is fixed.
- (2) Where it is agreed that the sale shall be at the market price, the applicable price shall be fixed on this basis at the time and place wherein the contract has been concluded unless an agreement or custom and usage stipulate otherwise.

Article 100

Where both contracting parties fail to fix a price for the sold item, the sale shall be concluded at the prevailing price between them. Where they did not have previous dealings, the sale shall be concluded at the applicable market price, unless it is established from circumstances or commercial practices that another price must be admitted.

Article 101

A third party may be authorised to fix the price, but where such party fails for any reason whatsoever on the date set down for this purpose or within a reasonable period to fix the said price, the current market price shall be recognised at the time and place wherein a contract has been concluded. If it is not feasible to learn the market price, such price shall be fixed by the Court.

Article 102

- (1) Where the price is estimated on the basis of weight, it shall mean the net weight, save where both parties have agreed otherwise or the prevailing usage is otherwise.
- (2) Upon delivering the sold item, there shall be no allowance for any shortfall that is allowed by the prevailing usage to be overlooked.

Article 103

- (1) Where a date is not fixed for delivery, it must be effected immediately upon conclusion of the contract, unless the nature of the sold item or the prevailing usage requires another date to be fixed.
- (2) Where it rests with the purchaser to set a date for delivery, the vendor shall deliver the goods on such date as is fixed by the purchaser giving due consideration to custom and usage and the requirements of the nature of the sold items.

Article 104

- (1) Where the vendor fails to deliver on the date fixed for delivery, the contract shall be deemed to have been terminated without need for service of notice, unless the purchaser gives notice to the vendor insisting upon performance of the contract within three days of such date.
- (2) The purchaser may claim from the vendor, by way of damages, the difference between the agreed price and the sum paid in good faith to procure a similar item.
- (3) Where the sale relates to goods having a known price in the market, the purchaser may claim from the vendor the difference between the price agreed and the market price on the date fixed for delivery, even though he does not purchase similar goods.

Article 105

If it is agreed to deliver the sold items in several parts, the purchaser may seek termination of the contract unless the vendor delivers any of the agreed parts on the fixed date thereof. Termination shall not be applicable to the parts that have already been delivered, unless the partition of the sold items results in serious damage to the purchaser.

Article 106

- (1) Where the vendor, at the request of the purchaser, sends the sold items to other than the place specified for delivery, the liability for perishing shall be borne by the purchaser from the date of delivery of the items sold to the carrier, after which the liability shall shift to the purchaser.
- (2) Where the vendor fails to comply with the instructions of the purchaser regarding the method of despatch without a justifiable necessity, he shall be liable for such damages as are sustained by the sold items as a result of such breach.

- (3) Expenses to be incurred by reason of delivering the sold items at a place other than that agreed upon shall be borne by the purchaser unless there is a mutual agreement to the contrary.

Article 107

Where the sold item is destroyed prior to delivery thereof for any reason beyond the vendor's control, the sale contract shall be terminated and the purchaser shall recover the sale price, unless the destruction took place after giving notice to the purchaser for taking delivery of the sold items.

Article 108

- (1) Where the price is not paid on the agreed date, the vendor may, after serving notice on the purchaser, resell the goods. If the goods are sold in good faith at a price lower than the mutually agreed price, the vendor may claim from the purchaser the difference between the two prices.
- (2) Where the goods sold have a certain specified price in the market, the vendor may claim from the purchaser the difference between the price agreed and that prevailing on the date fixed for payment of the price.

Article 109

- (1) Where the purchaser refuses to take delivery of the sold item, the vendor may commit it to a depository and sell it by public auction on the lapse of a reasonable time limit fixed by him and promptly notified to the purchaser. However, perishable items may be sold by public auction without the need to serve such notice.
- (2) Where the sold item has a certain specified price in the market, it may be sold at said price through an auctioneer.
- (3) The vendor shall deposit the proceeds of sale at the Court Treasury, pending the settlement of the dispute between him and the purchaser without prejudice to his right to deduct the price and the expenses of deposit and sale.

Article 110

Save in the case of agreement or usage, where the quantity or kind of the sold items delivered is less than what has been agreed upon, or if it appears that the items are defective or not compatible with the

conditions or the specimen on the basis of which a contract has been concluded, a purchaser shall not have the right to terminate the sale contract unless the shortfall, defect, non-compatibility or unfitness of the sold items for the intended purpose thereof as envisaged by the purchaser or if it becomes difficult to dispose thereof. In the event of refusing the termination request, it shall be sufficient to reduce the price.

#### Article 111

- (1) In the cases referred to in the preceding Article, the purchaser shall give notice to the vendor of the existence of the shortfall, defect or non-compatibility within fifteen days from the date of actual delivery of the sold items thereto. He shall also file legal action for termination of the contract or reduction of the price within one year from the date of such delivery, otherwise he shall forfeit his right to bring such legal action.
- (2) An agreement may be mutually concluded for extending the dates provided for in the preceding Article, shortening them or exempting the purchaser from complying therewith.

#### Article 112

- (1) If it is established after delivering the sold item to the purchaser that the quantity thereof is in excess of the actually agreed quantity, no ruling shall be passed enabling the vendor to recover the excess unless the purchaser refuses to pay the complete price after serving notice upon him to this effect.
- (2) The vendor's claim for payment of the complete price shall lapse after one year from the date of delivery, either actually or by a judgement, of the sold item to the purchaser.

#### Article 113

The purchaser who has paid the full price may ask the vendor to furnish him with an invoice for the goods on which there shall be indicated that the price has been paid.

#### Article 114

- (1) An agreement may be concluded for obliging the purchaser not to ask for a lower price upon the resale of the item which he purchases, if such item is protected by a registered trade mark.
- (2) This condition shall have no effect if the purchaser is a non-profit making organisation or if the sold item is one of the staple goods.

- (3) The successors of the purchaser shall not be obliged to comply with this condition unless they are aware thereof or if they were able to be aware thereof.

SECTION TWO

CERTAIN KINDS OF COMMERCIAL SALES

(1) Hire Purchase

Article 115

If the price is to be paid by instalments and the purchaser fails to pay one of the instalments of the agreed price, no judgement rescinding the sale may be entered if it is proved that he has performed the greatest part of his obligations.

Article 116

- (1) Where the ownership of the movable item sold is retained by the vendor pending the payment of all instalments, the purchaser shall acquire such ownership on payment of the last instalment. However, the purchaser shall bear the consequences of damages to the item sold from the time of delivery thereto.
- (2) A purchaser may not dispose of the item sold thereto before he has paid all instalments, save where the vendor agreed in writing to such action. Any disposal by the purchaser in contravention of this provision shall not be valid towards the vendor if he proves that such third party was aware at the time of disposal that the price had not been paid in full.
- (3) Notwithstanding the provisions regarding bankruptcy, the condition relating to the retention of ownership shall not be valid towards third parties unless it is written in a paper with a fixed date prior to such third party's right or to such execution proceedings as have been initiated by the creditors against the sold item.
- (4) Where the purchaser disposes of the item sold without having paid all the instalments of the price and without the consent of the vendor, the latter may require the former to pay all the remaining instalments at once.

2. F.O.B. Sales

Article 117

A FOB sale is one by which the goods are delivered at the port of shipping on board the vessel designated by the purchaser for their carriage.

Article 118

The purchaser shall execute the carriage contract of the goods, pay freight and notify the vendor within reasonable time of the name of the vessel chosen for the carriage as well as the place and date or time limit set for shipping.

Article 119

- (1) The vendor shall pack and ship the goods on board the vessel designated by the purchaser, on the date or within the time limit set for shipping.
- (2) The vendor shall incur the costs of packing, charges for checking, measuring, weighing or counting relevant to the shipping of the goods.
- (3) The vendor shall promptly notify the purchaser that the goods have been shipped and despatch to him the relevant papers, in which case the purchaser shall bear the costs of notification and despatch of the papers.

Article 120

Where the purchaser requires a certificate of origin of the goods, the vendor shall obtain the same and forward it to him.

Article 121

The vendor shall provide such assistance which will be needed to enable the purchaser to obtain the bill of lading and such other documents as are issued in the country of shipping which may be required by the purchaser to enable him to import the goods into the country of destination or their passage in transit through another state.

The purchaser shall incur the costs of obtaining such documents.

Article 122

The vendor shall incur all the amounts due and payable in respect of the sold item, including export fees and shipping costs up to the moment the goods goes through the shipping barrier of the vessel. The vendor shall be liable for the consequences of any damages suffered by the sold item upto the time hereinabove mentioned. Any costs accruing on the goods thereafter and any damages that may arise shall be borne by the purchaser.

Article 123

Where the arrival of the ship is delayed beyond the expiry of the time limit set for the shipping or where the vessel leaves the port before the expiry of this time limit or if the vessel is unable to ship the sold item , the purchaser shall be liable for incurring the additional costs arising therefrom and the damages suffered by the goods from the expiry date of the time limit set for the shipping, provided that the goods subject to the sale have been designated per se.

Article 124

Where the purchaser fails to give the name of the vessel to the vendor in due course or if he reserves the right to fix a time limit to receive the goods but fails to do so, he shall be liable for the resulting additional cost and such damage as may be suffered by the goods from the expiry date of the time limit agreed for delivery, provided that the goods subject to the sale have been designated per se.

3. C.I.F. Sale

Article 125

A CIF sale is the sale of goods whereby a vendor has committed himself to conclude a contract for the carriage of the sold item from the port of shipping to the port of discharge and to insure it against the transport risks as well as shipping it on board the vessel. For this purpose, he shall pay the necessary costs and expenses, and then he shall add them to the price which the purchaser shall be bound to pay.

Where the vendor shall be responsible for payment of the costs and concluding the carriage contract excluding the insurance contract, the sale shall be deemed as C.A.AND F.



Article 126

- (1) The vendor shall execute the carriage contract according to the customary conditions and shall choose a vessel suited for the carriage of goods of the same type as the sold item.
- (2) He shall be liable for payment of the freight and other charges that may be asked by the carrier to be paid at the port of loading.

Article 127

- (1) The vendor shall buy a maritime insurance policy for the sold items from a reputed insurer covering the risks of the voyage and shall pay the necessary costs and expenses. Where the goods are shipped in lots, each lot shall be insured separately. The vendor may not personally act as an insurer vis-a-vis the purchaser.
- (2) The insurance shall be concluded by a negotiable instrument and in accordance with the conditions of the prevailing usage at the port of shipping for the goods of the same kind and for a similar voyage, provided that the insurance amount shall not be less than the price of the goods mentioned in the insurance contract of sale together with ten per cent.
- (3) The vendor shall be bound only to insure against the normal risks of carriage, but he shall not be required to insure against such risks as are peculiar to a certain specified trade except where an agreement to that effect is made with the purchaser. Furthermore, the vendor shall not be required to insure the sold item against war risks, save where the contract provides otherwise.

Article 128

- (1) The vendor shall be bound to pack, load and ship the sold item on board the vessel within the period allowed for shipping as may be prescribed by custom and usage.
- (2) The vendor shall incur the export fees, packing and stacking costs, inspection, measurement or weighing costs or the costs of counting needed for the shipping purpose until the sold item is loaded on board the ship.
- (3) He shall promptly notify the purchaser of the name of the vessel and the fact that the shipping has taken place.
- (4) The purchaser shall incur the import fees and other expenses subsequent to the shipping in addition to the customs duties.

Article 129

The vendor shall be liable for whatever damages occurring to the sold item up to the time when it passes through the vessel's shipping barrier. Thereafter, such liability shall be borne by the purchaser.

Article 130

- (1) The vendor shall send without delay to the purchaser a clean negotiable bill of lading addressed to the specified port for the unloading. The bill of lading shall be accompanied by a list of the sold goods and the value thereof and the insurance policy or certificate replacing it and the other documents that may be requested by the purchaser. Should the bill of lading make reference in respect to certain matters to the vessel's charterparty, a copy of such charterparty shall also be attached. The bill of lading of the sold goods shall contain proof that the goods have been shipped on board the vessel on the date or within the time limit set for shipping, and to authorise the purchaser or his representative to take delivery of the goods by endorsing it thereto or by transferring this right thereto by the appropriate legal method. Where the bill of lading is for shipping, it shall bear an indication by the carrier on the date of shipping to the effect that the goods have been shipped on board the vessel.
- (2) A bill of lading is deemed to be clean if it does not contain any express additional conditions confirming the existence of defects or in the method of packing the sold goods. Such additional conditions do not include a reference in the bill of lading to the prior use of the containers or wrappings or to non-liability for any damage that may be sustained because of the nature of the goods sold or of the carrier's ignorance of the contents or weight of the packages.
- (3) The certificate substituting the original insurance policy shall be issued by the insurer and shall contain the basic conditions provided for in the original policy so that it shall vest the rights granted by such policy in the holder thereof.

Article 131

The purchaser shall not be bound to accept the documents sent to him by the vendor, if they do not conform to the stipulations of the contract of sale. The purchaser shall be deemed to have accepted such documents if he does not raise any objection within seven days from the date of receipt. The objection shall be made by notice served on the vendor requiring him to send the documents conforming to the conditions within a reasonable time limit. The purchaser may, after the expiry of the said time limit, apply for cancellation of the sale and payment of damages, if relevant.

Where the purchaser returns the documents for certain specified reasons or accepts them subject to reservations, he may not thereafter make any objection for other than the causes and reservations already made.

Where the purchaser returns the documents without a justifiable cause, he shall be liable to compensate the vendor for whatever damage which may result.

#### Article 132

Where the vessel carrying the goods sold arrives before the arrival of the documents or where the documents are received incomplete, the vendor shall immediately upon being informed of the same carry out whatever action which may be necessary to enable the purchaser to obtain a copy of the documents which did not arrive or to replace the missing documents. The vendor shall incur the relevant expenses and damages, if necessary.

#### Article 133

Where the purchaser maintains the right of determining a period for taking receipt of the goods or for specifying the port of loading without issuing specific instructions during this period, he shall be liable for the additional expenses arising therefrom and shall be responsible for the subsequent damages suffered by the goods from the date of the expiry of the agreed period for delivery, provided that the sold goods have been defined per se.

The C.I.F. sale shall be subject to the provisions of Articles 120 and 121.

### 4. Conditional Sales

#### Article 134

A contract which contains such conditions as will render the vendor liable for the destruction of the goods after being shipped, or makes the performance of the contract conditional on the safe arrival of the vessel, or which vests the purchaser with the option to accept the goods at his discretion or according to the proforma invoice delivered thereto, shall neither be a CIF nor a FOB sale, but shall be deemed to a sale conditional upon delivery at the place of the arrival.

### 5. Other Commercial Sales

#### Article 135

A special law to be promulgated in this respect shall govern the provisions with regard to the following commercial sales:

- (a) Sale of second-hand movables by a public auction.
- (b) Sale by a public auction.
- (c) Discount sales.

CHAPTER TWO

COMMERCIAL MORTGAGE

Article 136

A mortgage is commercial with regard to all interested parties where it is created over movable property as security for a debt which is deemed commercial vis-a-vis the debtor.

Article 137

- (1) A mortgage shall not be effective towards a third party unless possession of the mortgaged item passes to the mortgagee or to such other person as is appointed by the two contracting parties and remains in the possession of either such party until the cessation of the mortgage.
- (2) The mortgagee or the person appointed by the contracting parties shall be deemed as having possession of the mortgaged item:
  - (a) if it is placed at his disposal in such manner as will lead others to believe that the item has come into his custody.
  - (b) if he receives a document representing the mortgaged item vesting unto its holder an exclusive right to take delivery of such item.
- (3) Possession of rights shall pass upon the delivery of executed deeds establishing them. Where a deed has been deposited with a third party the delivery of the deposit receipt shall be deemed as the delivery of the document itself, provided that the deed is described adequately in the receipt and provided that the depositary accepts possession thereof for the account of the mortgagee.

In this event, the depositary shall be deemed as having relinquished every right thereof to withhold the deed for an account arising from a cause prior to the mortgage unless he has maintained this right upon accepting the possession of the deed for the account of the mortgagee.

Article 138

- (1) The mortgage of rights established by nominal documents is effected by a written assignment indicating that it serves as a security and shall be entered in the books of the authority which issued the document. An endorsement to this effect shall be made on the document itself.
- (2) The mortgage of rights established by documents to order shall be effected by an endorsement stating that the value serves as a security or any other phrase to this effect.
- (3) The mortgage of other rights which are not established by nominal documents or documents to order shall be effected by following the procedures and terms relevant to the assignment of rights.
- (4) The mortgage referred to in the preceding Paragraphs shall be valid towards the debtor without the need for notifying him of the mortgage or his acceptance thereof.

Article 139

Subject to the provisions set forth in the preceding Article, it is not essential for the validity of a commercial mortgage towards third parties to be made in writing nor that the deed evidencing the mortgage be dated. A commercial mortgage may be proved by all methods of proof for commercial matters with regard to the contracting parties and towards third parties, whatever may be the value of the debt secured by the mortgage.

Article 140

A mortgagee shall, where requested by the mortgagor, deliver to him a receipt showing the nature, quantity, weight and other distinctive features of the mortgaged item.

Article 141

- (1) Where a mortgage is effected on a fungible item, the mortgage shall remain valid even when the mortgaged item has been replaced by another item of the same kind.
- (2) Where the mortgaged item is non-fungible, the mortgagor may receive it and replace it by another item, provided that the mortgage deed contains a provision to that effect and also provided that the creditor accepts the substitute, without prejudice to the rights of a bona fide third party.

Article 142

A mortgagee shall take all the necessary measures to safeguard the mortgaged property. A mortgagee shall use on behalf of the mortgagor all the rights relevant to the mortgaged property, to receive its value, profits, interest and such other sums which result therefrom on maturity. He shall deduct the sums received first from the value of the expenses incurred, then interest and principal amount of the loan secured by the mortgage unless the Law or the two parties mutually agree to the contrary.

Article 143

Where the mortgaged property is an instrument the value of which has not been paid in full the mortgagor shall, when called upon to pay the unsettled portion, present to the mortgagee the amounts of money needed for payment of such portion at least two days before the date of maturity, otherwise the mortgagee may sell such mortgaged instrument in accordance with the provisions of the following Article.

Article 144

- (1) Where the mortgagor fails to pay on the date of maturity the debt secured by the mortgage, the mortgagee may, after the lapse of five days from the date of service of notice on the debtor to pay, submit a petition to the President of the High Civil Court or the designated Puisne Justice of the Court for this purpose requesting the issue of an order to sell all or part of the mortgaged property.
- (2) An order issued by the President of the High Civil Court or any designated Puisne Justice of the Court to sell the mortgaged property may not be executed except after the lapse of five days from the date of service of notice to the debtor or to the real guarantor, if any, while stating the place and date of the sale, provided that no appeal shall be filed by the person against whom the order has been passed within the aforesaid period.
- (3) The person against whom the order has been passed may appeal against it within five days from the date of serving notice thereto in this respect. The verdict adopted with respect to the appeal may not be challenged at all.
- (4) The sale shall take place at the time and place determined by the President of the High Civil Court or the designated Puisne Justice of the Court for this purpose. The sale shall be effected by a public auction in accordance with the procedures to be defined by the Judge issuing the order.

- (5) The mortgagee shall have a lien to recover the debt owed thereto, such as the principal, interest and expenses, from the proceeds of sale.

#### Article 145

Where it is decided to mortgage several properties, the mortgagee shall have the right to determine the property which shall be subject to the sale unless there is an agreement to the contrary. In all cases, the sale shall not include except what is sufficient for the settlement of the creditor's rights.

#### Article 146

Where the mortgaged item is subject to destruction or deterioration, or where its possession necessitates incurring exorbitant expenses and the debtor is unwilling to provide a substitute, either the mortgagee or mortgagor may file an application with the President of the High Civil Court or the designated Puisne Justice of the Court for an authorisation to sell the said item immediately in any manner decided by the President of the High Civil Court or the designated Puisne Justice of the Court, in which event the mortgage shall apply to the price arising from the sale.

#### Article 147

Every agreement executed at the time of or after the establishment of a mortgage which vests the mortgagee with a right, in the event of non-settlement of the debt on maturity, to acquire the mortgaged item or the sale thereof without complying with the procedures set forth in Article 144, shall be deemed null and void.

### CHAPTER THREE

#### DEPOSIT IN PUBLIC WAREHOUSES

#### Article 148

- (1) Depositing in public warehouses is a contract whereby the owner of a warehouse undertakes to receive and keep goods for the account of the depositor or any person to whom ownership of possession thereof devolves pursuant to the documents which represent them.
- (2) A public warehouse shall not be established or exploited with the right to issue negotiable documents representing the deposited goods except by a licence from the Minister for Commerce and Agriculture according to the terms and conditions issued by an order therefrom.

Article 149

- (1) Any person who exploits a public warehouse shall provide an insurance cover against fire risks with an insurance company, and such insurance cover shall include the goods kept in the store for the account of third parties.
- (2) However, the insurance referred to in the preceding Paragraph shall not cover the goods deposited in one of the public warehouses located in a sea port if such goods are already covered by marine insurance against fire risks. If the incident occurs during the period of the marine insurance, the owner of the warehouse shall not be liable therefor towards the depositor, the insurance company or the holder of the document representing the goods. After the expiry of the marine insurance term, the goods shall be covered by the insurance on the warehouse.

Article 150

- (1) The warehouse owner may not carry on in any capacity either for himself or for others any commercial activity with respect to goods of the same kind as the goods which he is licensed to keep in his warehouse and issue documents representing such goods.
- (2) The foregoing provision shall apply where the person in charge of exploiting the warehouse is a company where one of its partners who owns at least ten percent of its capital carries on a commercial activity covered by the restriction set down in the preceding Paragraph.

Article 151

The depositor shall give to the public warehouse correct particulars about the nature, kind and value of the goods.

Article 152

- (1) the warehouse owner shall be responsible for keeping and maintaining the goods deposited and shall be liable up to a sum not exceeding that estimated by the depositor.
- (2) the warehouse owner shall not be responsible for any loss or shortfall suffered by the goods where such loss or shortfall is the result of a force majeure or of the nature or method of preparation of the goods.



Article 153

- (1) The depositor shall receive a storage receipt showing such details as the name, occupation, domicile, as well as the kind, nature and quantity of the goods and such other particulars as are requisite to identify them and determine their value and the name of the warehouse wherein they are deposited; and also the name of the insurance company, if any, providing the insurance cover and a statement as to whether or not the accruing taxes and duties have been paid.
- (2) the public warehouse shall keep a true and original copy of the storage receipt.

Article 154

Where the goods in respect of which a storage receipt and a mortgage deed have been issued are fungible, they may be replaced by goods of the same nature, kind and quality provided that a stipulation to that effect had been included in the storage receipt.

In this case, all the rights of the receipt holder shall pass to the new goods.

Article 155

- (1) The storage receipt may be issued in the name or to the order of the depositor.
- (2) Where the storage receipt is made to the order of the depositor, he may assign it together or separately by endorsement.
- (3) The endorsee of the storage receipt may request the recording of the endorsement together with his domicile on the copy maintained by the warehouse.

Article 156

- (1) The endorsement of the storage receipt shall be dated.
- (2) An endorsement of the storage receipt shall have the effect of transferring the ownership of the goods to the endorsee.

Article 157

Where the goods suffer an accident, the holder of the storage receipt shall have the right to the insurance amount which accrues upon the occurrence of such accident as those he had over the goods.

Article 158

A person who loses the storage receipt may file a petition with the Court requesting the issue of an order to deliver thereto a duplicate of the lost document, provided that he proves his ownership thereto and provides a surety.

Article 159

The surety provided in case of the loss of the storage receipt shall be discharged of liability with the lapse of five years if no claims of recovery of the goods has been submitted to the warehouse.

Article 160

- (1) Where the depositor fails to recover his goods on the expiry of the deposit contract term, the warehouse owner may after giving notice thereto apply for the sale of the goods in accordance with the procedures laid down in Article 144. Then, the warehouse owner shall collect the amounts due thereto from the proceeds of sale and shall hand over the balance to the depositor or shall deposit it with the court treasury.
- (2) The provisions of the preceding sub-paragraph shall apply where the deposit contract has no fixed term and the depositor failed after one year to apply for the recovery of the goods or to express his desire to carry on with the deposit contract.

Article 161

- (1) Any person who establishes or exploits a public warehouse contrary to the provisions of Article 148 shall be liable for a prison sentence for a term of six months or payment of a fine not exceeding BD 500, or both penalties.
- (2) The Court may order the publication of the conviction judgement or a summary thereof in the newspapers designated by itself and displaying it on the doors of the warehouse or at any other place at the expense of the convicted person.
- (3) The court may also, in the event of conviction, decree the liquidation of the warehouse and the appointment of a liquidator whose powers shall be determined.

Article 162

The punishment provided for in the first Paragraph of the preceding Article shall be inflicted upon any person who exploits a public warehouse, its manager, employee or servant of such warehouse who divulges professional secrets relating to the goods deposited therein.

Article 163

- (1) The Minister for Commerce and Agriculture shall issue an order governing the operation of public warehouses.
- (2) Every public warehouse shall lay down the rules governing its activities in compliance with the type of business undertaken thereat, the nature of the goods stored, the location wherein it operates and such rules shall include, in particular, the manner of determining the warehousing charges.

CHAPTER FOURCOMMERCIAL AGENCY1. Commercial Agency In General termsArticle 164

Save for the provisions contained in this Chapter, a commercial agency shall be subject to the provisions of the Commercial Agencies Law promulgated by Legislative Decree No.(23) of 1975.

Article 165

For the purpose of enforcing the provisions of this Law, a commercial agency shall be defined as follows:

- (a) Representing the principal with regard to the distribution of goods and products or displaying them for sale or trading, provided that a commercial agent shall have an exclusive right to the distribution of the commodity in consideration of a profit or commission.
- (b) Agencies of land, sea or air transport and travel and tourist agencies.
- (c) Agencies of business, services, insurance, publications, printing, newspaper, publicity and advertising.

Article 166

An agency contract shall contain the following particulars:

- (a) The name and nationality of the agent and principal.
- (b) The properties, goods and services covered by the agency, rights and obligations of each of the agent and principal and a statement of the amount of the profit or commission to be received by the agent in consideration of acting in such capacity.
- (c) The agent's area of business activity.
- (d) Term of the agency if it is for a definite period,
- (e) Head office of the agent and principal.
- (f) Commodity's brand name.
- (g) Obligation of the agent to adequately provide spare parts and the necessary maintenance for the repair of vehicles, engines, equipment or electrical or electronic equipment covered by the commercial agency.
- (h) Any other conditions to be agreed upon between the principal and the agent provided that they shall not conflict with the provisions of this Law.

Article 167

A commercial agent shall carry on his agency's business activities and organise his normal trading activities in an independent manner.

Article 168

The principal shall not seek the services of more than one agent in one area of activity for the same business activities covered by the agency.

Article 169

A commercial agency contract shall be deemed to have been concluded in the mutual interest of the two contracting parties.

Article 170

An agent shall be entitled to receive a profit or commission for the transactions concluded by the principal or by another person in the area of activity designated for the agent's operations, even though such transactions have not been concluded as a result of the latter's efforts, unless there is an agreement to the contrary.

Article 171

If an agency contract is for an indefinite period, neither of the contracting parties shall terminate it, unless either of them commits a fault justifying the termination of the contract.

Article 172

If an agency is withdrawn at an inappropriate time or for a reason beyond the agent's control, the latter may file a claim against the principal for the payment of a compensation equalling the damages suffered and the loss of profit. Further, an agent shall be entitled in the event of termination of the agency upon the expiry of the term thereof and in spite of every agreement to the contrary to claim a compensation to be estimated by the Court if his activity has resulted in an obvious success in the promotion of the principal's products or increasing the number of his customers but has been prevented from reaping the profit from such success by the principal's opposition to renewing the agency contract.

Article 173

An agent may not relinquish the agency at an inappropriate time or without a justifiable excuse, otherwise he shall be obliged to pay a compensation to the principal for the damages suffered by reasons of abandoning the agency.

Article 174

The principal shall reimburse the agent for what he has spent in operating the agency's business in accordance with the agreement between them, whatever may be the degree of the agent's success in carrying out his task. Should the operation of the agency's business involve certain funds given by the principal to the agent to spend with regard to the agency's affairs, the principal must provide such funds whenever so requested by the agent.

The principal shall discharge the agent of liability for any obligations concluded in the latter's name for the sake of operating the commercial agency's business.

- (2) However, a commission agent may grant a time limit for payment of the price or make it payable by instalments without obtaining the principal's approval, where it is the usage in the area where the sale was effected to do so, save where the principal's instructions bind him to sell for immediate payment.

#### Article 180

Where the principal issues instructions for selling against deferred payment, and if the commission agent sells for immediate payment, in this case the commission agent shall be bound to pay the price on the basis of sale on deferred payment.

#### Article 181

- (1) A commission agent shall be liable for the damage or loss of the goods in his possession for the account of the principal unless such damage or loss arises from a force majeure or an inherent defect in the goods.
- (2) A commission agent shall not be responsible for insuring the goods in his possession for the account of the principal unless he is asked by the principal to do so or if the taking of insurance is required according to custom and usage or is necessitated by the nature of the items involved.

#### Article 182

- (1) A commission agent may not disclose the name of his principal unless the latter authorises him to do so.
- (2) A commission agent shall not be bound to reveal the name of the third party with who he entered into contract to the principal unless the transaction is intended for a specific term, in which case the principal may consider the dealing against immediate consideration where the agent refuses to disclose the name of such third party.

#### Article 183

A commission agent may not include himself as a second party to the transaction unless the principal authorises him to do so, in which case the commission agent shall not be entitled to his remuneration.

Article 184

- (1) A commission agent shall be directly liable towards the third party with whom he has entered into contract. Such third party shall also be directly liable towards the commission agent.
- (2) A third party may not have direct recourse against the principal nor shall the latter have direct recourse against the third party, save where the law provides otherwise.

Article 185

- (1) If a commission agent involved in a sale transaction becomes bankrupt before the receipt of the price from the purchaser, the principal may directly demand the purchaser to pay the price thereto.
- (2) If a commission agent involved in a purchase is declared bankrupt before taking delivery of the sold item, the principal may directly demand the vendor to deliver the sold item thereto.

Article 186

- (1) A commission agent shall not be responsible for discharging the obligations of the party with whom he entered into a contract unless he has expressly assumed this responsibility or if it is the custom and usage in the area wherein he carries on his activity to do so.
- (2) A guarantor commission agent shall be entitled to a special remuneration to be decided by the court in the absence of an agreement or usage in respect thereof.

Article 187

- (1) A commission agent shall not be entitled to his commission unless he concludes the transaction which he was instructed to complete or if he proves that it was impossible to conclude for a reason attributable to the principal.
- (2) In other than the above two cases provided for in the preceding Paragraph, a commission agent shall not be entitled to receive a compensation for the efforts made according to the prevailing custom and usage.
- (3) If the principal agrees with the commission agent on remunerations for acting as an agent, such remuneration shall not be subject to the judge's determination.

Article 188

- (1) The principal shall reimburse the commission agent for the expenses and other costs incurred for conducting the agency's business.
- (2) Except in the case of the commission agent's fault, a principal may not refuse to pay the expenses provided for in the preceding Paragraph even though the transaction has not been concluded, unless there is an agreement to the contrary.
- (3) The principal shall pay interest for the amounts and costs incurred by the commission agent with effect from the date of paying them.
- (4) Should a commission agent suffer damages by reason of conducting the agency business.

Article 189

- (1) A commission agent, whether he is instructed to buy or sell, shall in addition to his right to withholding the documents have a lien over the documents and goods consigned thereto or deposited therewith or delivered thereto for safekeeping upon the occurrence of consigning, depositing or delivering the said documents and goods.
- (2) Such lien shall secure the agent's commission and all the amounts owed thereto by reason of the agency and the benefits attached thereto whether these sums were paid before delivering the documents or goods or while they were in his possession.
- (3) The lien shall be determined irrespective of whether the debt has been created from business relating to the documents or goods that are still in the agent's possession or to other documents or goods that were previously sent thereto, deposited therewith or delivered thereto for safekeeping.
- (4) If the documents or goods are sold for the account of the principal and delivered to the purchaser, the commission agent's lien shall pass to the price thereof.

Article 190

- (1) A commission agent shall not have a lien over the goods consigned thereto, deposited therewith or delivered thereto for safekeeping unless they remain in his possession.



- (2) The goods shall be deemed in the possession of the commission agent:
- (a) if they are kept at his disposal at the customs, in a public warehouse or at its stores or if he undertakes the transport thereof by his own means.
  - (b) if they are in his possession before the arrival thereof by virtue of a bill of lading or any other document of transport.
  - (c) if he exports them and remains, in spite of this fact, in possession thereof by virtue of the bill of lading or any other document.

#### Article 191

A commission agent may not delegate another person to carry on his business for which he is acting as an agent unless the principal's permission has been obtained. Should he nominate another commission agent to act on his behalf, the person so appointed shall not have the rights of withholding or lien provided for in Articles 189 and 190, except to the extent of the debt owed to the original commission agent.

#### Article 192

A commission agent's lien shall have priority over all the other preferred rights save for the legal costs, taxes and fees due and payable to the Government and other rights of any kind whatsoever subject to the terms and conditions stipulated under the applicable laws.

#### Article 193

- (1) For the enforcement on documents and goods in possession of the commission agent for recovering his right, the enforcement procedures on the mortgaged item subject to a commercial mortgage shall be applicable.
- (2) However, if a commission agent is instructed to sell the documents or the goods in his possession, he may enforce thereupon for recovering his right by way of selling them without the need for following the procedures set forth in the preceding Article, unless it becomes impossible for him to implement the principal's instructions with respect to the sale.

### 3. Commercial Representation

#### Article 194

Any person who has been instructed by a trader to carry on any of his business activities in a roving capacity, at his business premises or at any other premises, shall be deemed as a commercial representative if he is employed by him under a contract of employment.

#### Article 195

- (1) A trader shall be responsible for such dealings and contracts which are concluded by his representative within the limits of the authorisation given thereto by the trader.
- (2) Where the representative has been delegated by several traders, they shall be jointly responsible.
- (3) Where the representative has been delegated by a company, it shall be responsible for his actions and the liability of the partners shall be in conformity with the type of the company.

#### Article 196

- (1) Where the commercial representative's delegation does not set any limits, it shall be deemed to be general and comprehensive covering all dealings related to the kind of business which the representative has been authorised to carry on.
- (2) A trader may not plead against a third party that the delegation was limited unless it is proved that such third party was aware of such limitation.

#### Article 197

A commercial representative shall carry on in the name of the trader such commercial activities which he has been authorised to carry on. Upon signing he shall indicate the full name of the trader next to his full name and an indication that he is a commercial representative, otherwise he shall be personally liable for such activities that he had carried out. Nevertheless, a third party may have direct recourse against the trader with regard to dealings carried out by the representative which are relevant to the kind of trade he had been authorised to carry out.

#### Article 198

A commercial representative shall be jointly liable with the trader for complying with the legal provisions relating to the business activities assigned to him.

Article 199

A commercial representative may not , without obtaining an express approval from the trader who has appointed him, carry on for his own account or for the account of another person a business activity similar to the duties entrusted thereto or identical to such duties.

Article 200

A commercial representative may not effect any commercial dealing for his own account or that of a third party without obtaining an express approval to do so from the trader who employed him.

Article 201

A roving commercial representative may not receive the consideration nor reduce or delay any part of the prices of commodities which he did not sell, but shall accept in the name of his principal the orders of others and shall take the necessary precautions which safeguard the rights of the person whom he represents.

Article 202

A trader may authorise some of his employees to sell within the store by retail or wholesale. Such employees may, where a cashier has not been assigned to receive prices within the store, receive prices of articles which they sell when delivered to the customer. The receipts issued in the name of the trader shall be in consideration for what they have sold.

The said employees may not require payment of the price outside the premises unless they have been authorised in writing by the trader to do so.

Article 203

A commercial representative may, in the name of the trader who has authorised him, bring legal actions against third parties in respect of the business transactions for which he has been authorised.

Further, third parties as well as the trader himself may bring legal actions against the said representatives.

CHAPTER FIVE

BROKERAGE AND SECURITIES MARKET (STOCK EXCHANGE)

1. Brokerage

Article 204

Brokerage is a contract whereby a broker undertakes to another person to look for and mediate with another party to execute a certain contract in consideration of remuneration.

Article 205

Where the law or the agreement does not fix the broker's remuneration it shall be determined according to custom and usage, in the absence of which the judge shall estimate it in a manner commensurate with the efforts made and the time spent by the broker in carrying out the work assigned to him.

Article 206

- (1) A broker shall not be entitled to remuneration unless his mediation results in execution of the contract.
- (2) The remuneration shall accrue on the mere execution of the contract, even when it is not implemented in whole or in part.
- (3) Where the contract is made conditional upon a standing condition the broker shall not be entitled to remuneration unless such condition is satisfied.

Article 207

- (1) Where a broker has been authorised to act by both parties to the contract, he shall be entitled to receive remuneration from each one of them.
- (2) Each of the contracting parties shall be separately liable to the broker for payment of the remuneration due from him even when they have agreed that either party will bear all the expenses of the brokerage.

Article 208

Unless agreed, a broker may not recover such costs which he incurs in the execution of his assignment. In case of such agreement, the said costs will accrue even when the contract is not executed.

Article 209

A broker may not claim his remuneration nor recover his costs if he has caused damage to either contracting party in favour of the other contracting party who did not assign him to mediate on his behalf or where he has obtained a promise from such other party prejudicial to good faith to obtain a benefit for himself.

Article 210

A broker may not appoint himself as a second party to the contract for the execution of which he is mediating unless the contracting party authorises him to do so. In such case, the broker shall not be entitled to any remuneration.

Article 211

The court may reduce the broker's remuneration if it is not proportionate to the services he has performed, unless the amount of such remuneration has been determined or if the agreed remuneration was paid after the conclusion of the contract for which the broker has mediated.

Article 212

- (1) A broker shall enter into his records all transactions and their particulars which have been executed through his endeavours, and must keep the relevant documents. He shall deliver certified copies of all the foregoing to any contracting party required by them. The said registers shall be governed by the same provisions as those governing commercial books.
- (2) In the case of a sale by a specimen, a broker shall maintain the specimen until the buyer accepts the goods without reservations or when all disputes with respect thereto are settled.

Article 213

- (1) Where the broker appoints another to perform the duty assigned to him if he is not authorised to do so, he shall be liable for the acts of the person whom he had appointed as though he himself had performed such acts. Both the broker and the person whom he appointed to act for him shall be jointly liable.
- (2) Where a broker is authorised to appoint a deputy to act for him without designating the person of such deputy, the broker shall not be liable except for the fault in choosing his deputy or for the instructions given to the deputy.
- (3) In all cases the person who contracted with the broker, as well as the deputy broker, may each have recourse against the other.

Article 214

A broker shall be liable for an error he has committed in executing the assignment he was asked to carry out.

Article 215

Where several brokers have been authorised to arrange the conclusion of a single contract, they shall be jointly liable for the work assigned to them, unless they have been authorised to act separately.

Article 216

Where several persons have appointed one broker for a joint assignment, they shall be jointly liable for the performance of such assignment, unless otherwise agreed.

Article 217

- (1) The provisions of Articles 204 to 212 shall not be applicable to real estate brokerage, but there shall be applied to real estate brokerage the provisions of Legislative Decree No.21 of 1976 Governing Real Estate Brokerage.
- (2) The securities market (Stock Exchange) shall be subject to the provisions of the laws and orders regulating it.

2. Securities Market (Stock Exchange)

Article 218

The Securities Market (Stock Exchange) is deemed as a juristic person having the capacity to dispose of and manage its property and the right of litigation.

Article 219

- (1) A securities market shall only be opened by a permission of the Minister for Commerce and Agriculture.
- (2) Every securities market which is opened without a permission shall be closed by administrative methods.

Article 220

The business activities of the securities market shall be regulated, and such regulation shall include the following in particular:

- (1) management and conduct of business in the securities market.
- (2) formation of the Board of Directors of the securities market and determining of the Directors' terms of reference.
- (3) conditions for listing stockbrokers and their assistants in the securities market.
- (4) arbitration boards.
- (5) disciplinary penalties and disciplinary committees.

The Minister for Commerce and Agriculture shall issue by an order the Internal Regulations of the securities market.

Article 221

One Government representative or more shall be present at the securities market to oversee the implementation of the regulations thereof.

Article 222

Business added to a term which is concluded in the securities market in compliance with its regulations, shall be deemed lawful and valid even where the contracting parties intend that it results in the mere payment of the difference.

Article 223

Securities market business shall not be concluded validly unless it is concluded through the intermediary of stockbrokers whose names are recorded in a list prepared by the Board of Directors of the Securities Market.

CHAPTER SIX

CARRIAGE

Article 224

- (1) A carriage contract is one pursuant to which the carrier undertakes to carry a thing or person to a certain specified destination in consideration of a certain and specified freight/fare.

- (2) A carriage contract is concluded by mutual agreement where both parties have expressly or implicitly agreed to delay it until the date of delivery.
- (3) A contract may be proved by any of the legally prescribed methods of proof.

#### Article 225

Save for maritime and air transport, the provisions set forth in this Chapter shall be applicable to all types of carriage whatever may be the capacity of the carrier unless the law or international agreements in force in Bahrain otherwise provide.

#### 1. Carriage of Items

#### Article 226

- (1) A bill of lading shall always be made out in duplicate.
- (2) A bill of lading shall contain , in particular, the following details:
  - (a) Date of making the bill.
  - (b) Names of the consignor, consignee, carrier, and carriage commission agent , if any, and their domiciles.
  - (c) Place of departure and destination.
  - (d) Kind, weight , size and method of packing of the item to be carried, number of parcels and such other particulars as may be necessary to identify and evaluate the item to be carried.
  - (e) Time limit for the carriage.
  - (f) Freight amount and the party that must pay it.
  - (g) Specific agreements relating to the method and route of carriage and such compensations as will accrue in the event of damage, destruction or delay in the arrival of the item.
- (3) The consignor shall sign one of the two copies of the bill of lading which shall be delivered to the carrier, and the latter shall sign the other copy that will be delivered to the consignor.



- (4) A bill of lading may be made out in the name of a specific person or to the order thereof or for the holder. The said bill of lading shall be negotiated in accordance with the rules governing the transfer of civil rights if it is nominal and by way of endorsement if it is made out to the order of a person and by way of conveyance if it is made out to the bearer.

#### Article 227

The opposite of the contents of a bill of lading may be proved by all the legally prescribed methods of proof.

#### Article 228

- (1) In the absence of a bill of lading, the carrier shall, if the consignor so requests, deliver to him a receipt signed by the carrier purporting the receipt of the item carried.
- (2) Such receipt shall be dated and shall have adequate particulars to identify the item carried and the freight.

#### Article 229

- (1) The consignor shall deliver the item carried to the carrier.
- (2) Where the carriage requires the carrier to make special preparations, the consignor shall notify him accordingly within sufficient time before delivery.
- (3) The delivery shall take place at the carrier's domicile unless otherwise agreed upon.
- (4) The carrier may require the opening of parcels before taking them over, in order to verify the authenticity of the particulars stated by the consignor.

#### Article 230

- (1) Where the nature of the item requires that special preparations be made for its carriage, the consignor shall have it packed in such a manner as to protect it from destruction or damage, otherwise the persons or other properties carried therewith might become subject to damage.

- (2) The consignor shall be responsible for the damages caused by defects in packing. Meanwhile, the carrier shall be responsible for such damages if he accepts to undertake the carriage while being aware of the packing defects. The carrier shall be considered aware thereof if they are obvious or if they are not unknown to the ordinary carrier.
- (3) The carrier may not deny his responsibility for the damage or destruction of an item that he has undertaken the carriage thereof by proving that the damage has arisen from a defect in the packing of another item. Any agreement to the contrary shall be deemed null and void.

#### Article 231

The consignee shall not be held responsible for the obligations arising from the carriage contract unless he explicitly or implicitly accepts them. An implicit acceptance shall be considered in particular when the consignee claims delivery of the item pursuant to the bill of lading or where after receipt of the said bill of lading he issues instructions relevant to such item.

#### Article 232

- (1) The consignor shall pay to the carrier the freight as well as the other costs which may accrue, save where it is agreed that they be borne by the consignee, in which case, both the consignor and consignee shall be jointly liable to pay the freight and costs.
- (2) No freight shall be paid to the carrier in respect of such items that may be destroyed by a force majeure.

#### Article 233

The owner of an item may dispose thereof by way of sale or otherwise so long as it is in possession of the carrier pursuant to a bill of lading bearing the carrier's signature.

#### Article 234

- (1) Where the item is in possession of the carrier, the consignor may order him to return it to him or to direct it to other than the original consignor, in which case he shall pay the freight of the part of the carriage performed and remunerate the carrier for the costs and damages.

- (2) However, the consignor may not exercise the foregoing right, if
  - (a) he fails to produce the bill of lading or the receipt evidencing the carriage.
  - (b) the item has arrived and the consignee has been notified to take delivery thereof or has requested that the item be delivered thereto,
- (3) The foregoing right shall be vested in the consignee from the date of receiving the bill of lading.

#### Article 235

- (1) The carrier shall load and stack the item on board the means of carriage save where the contrary has been agreed.
- (2) Where it is agreed that the consignor shall load and stack the cargo, the carrier shall refuse the carriage where the loading or stacking has a defect which cannot be concealed from an ordinary carrier.

#### Article 236

- (1) The carrier shall follow the mutually agreed upon route. In the absence of an agreement on a certain specified route, the carrier shall take the shortest route.
- (2) However, a carrier may change the route agreed upon or may not be required to take the shortest course where a necessity arises.

#### Article 237

- (1) The carrier shall be liable for the safety of the item during the performance of the bill of lading.
- (2) He shall execute the instructions with regard to the item subject to the carriage if they are issued by the persons entitled thereto in accordance with Article 234.
- (3) The carrier shall be liable from the time of receiving the item for its total or partial destruction, damage or delay in delivering it.
- (4) Where the item is not found after the lapse of a reasonable period of time from the expiry of the time limit set or allowed by usage for the arrival of the item, it shall be deemed to have perished completely.

Article 238

The carrier shall unload the item upon arrival, save where otherwise agreed.

Article 239

- (1) Where delivery is not incumbent at the consignee's premises, the carrier shall inform him of the arrival of the item and the date on which he is able to receive it.
- (2) The consignee shall receive the item on the date fixed by the carrier, otherwise he shall be liable for payment of the storage fees. The carrier may, upon the expiry of the time limit set for the delivery, move the item to the consignee's premises against payment of a surcharge.

Article 240

- (1) Where the commencement of the carriage is prevented by a certain obstruction or if the carriage is suspended when it is taking place or where the consignee is not present to take delivery of the item on the date fixed by the carrier, or where he is present by refrains from taking delivery of the item or from payment of the freight and other costs, the carrier shall notify the consignor of this fact and requests his instructions.
- (2) Where the consignor delays the giving of his instructions to the carrier on time, the carrier may plead with the Court for the appointment of an expert or several experts for proving the condition of the item subject to the carriage and give him permission to keep it in the custody of a custodian for the account of the consignor and at his risk.
- (3) Where the item is exposed to damage, destruction or fall in the value thereof or if its maintenance requires substantial costs, the Judge shall order the sale thereof in the manner he deems fit and depositing the price thereof in the treasury of the Court for the account of the persons concerned. The Judge may, if necessary, order the sale of all or some of the item to the extent sufficient for the settlement of the amounts due to the carrier and in the manner determined by the said Judge.

Article 241

- (1) The carrier may withhold the item for the settlement of the freight, expenses and other sums accrued by reason of the carriage.
- (2) The carrier shall have a lien over the proceeds of selling the item for the satisfaction of the amounts accrued thereto by reason of the carriage.

Article 242

- (1) The carrier shall not be liable for whatever deficit in weight or volume which may be suffered in the course of carrying it , unless it is proved that the deficit was due to other causes.
- (2) If the bill of lading covers several items divided into parcels or consignments, the allowed deficit shall be determined on the basis of each parcel or consignment if the weight is stated in the bill of lading or if it is possible to prove it by any other method.

Article 243

If the item is carried under the security of the consignor or consignee, the carrier shall not be held liable for the damage or destruction thereof, unless the consignor or consignee proves that the fault is attributed to the carrier or his servants.

Article 244

The carrier may not deny his liability for the damage or destruction of the item subject to the carriage or delay in delivering it except by proving the occurrence of a force majeure, presence of an inherent defect in the item or the fault of the consignor or consignee.

Article 245

The carrier shall be liable for the acts of the persons he employs for carrying out the obligations arising from the carriage contract.

Article 246

- (1) Every condition exempting the carrier from liability for the total or partial destruction or damage of an item shall be deemed null and void.
- (2) Likewise, every condition providing for the exemption of a carrier from such liability shall be deemed null and void if it arises from the acts of his servants.

Article 247

- (1) In other than intentional and gross faults by the carrier or his employees, the carrier may:
  - (a) determine his liability for the destruction or damage, provided that the agreed damages shall not become trivial.

- (b) stipulate his exoneration from liability for the delay.
- (2) The condition for exoneration from or determining liability shall be in writing.

Article 248

- (1) Where an item the value of which is not stated in the bill of lading, is lost or destroyed, the compensation shall be estimated on the basis of the actual value of the item which was destroyed or lost at the destination on the date set therefor, according to the prevailing market price. In the absence of a certain fixed price for the item, its value shall be determined by an expert to be appointed by the court.
- (2) Where the value of the item is stated in the bill of lading, the carrier may dispute such value and may prove the real value of such item by all methods of proof.
- (3) The carrier shall not be liable for the loss of such monies, securities, jewellery or other precious items which were entrusted into his care for carriage, except to the extent of the written particulars supplied by the consignor in respect thereof.

Article 249

Where as a result of destruction or the delay in the arrival of the item it became unsuitable for the purpose for which it is intended, and where the carrier's liability is proved, the applicant for compensation may abandon such item to the carrier against full compensation.

Article 250

- (1) The receipt of an item subject to the carriage without reservations causes the right of recourse to lapse against the carrier for the damage or partial destruction, save where the consignee is able to establish the condition of the goods and brings action against the carrier within thirty days from the date of delivery.
- (2) The carrier may not invoke his non-acceptance of the claim according to the preceding Paragraph:
  - (a) if it is proved that the damage or destruction has arisen from an act of fraud or gross error of the carrier or his employees.
  - (b) if it is proved that the carrier or his employees deliberately concealed the damage or destruction.

Article 251

- (1) Where several carriers perform one carriage contract successively, the first carrier shall be liable to both the consignor and consignee for the whole carriage. Any condition to the contrary shall be deemed null and void.
- (2) Each of the carrier's subsequent to the first shall be liable to him, to the consignor or consignee for the damage suffered by the goods during that part of the carriage which he performed. Where it is impossible to determine the stage of the carriage during which the damage occurred, the compensation shall be apportioned among the carriers, each according to the freight accruing to him. Where one of the carriers becomes insolvent, his portion shall be borne by the remaining carriers in the same proportion.

2. Carriage of Persons

Article 252

- (1) A passenger shall pay the carriage costs on the agreed date or as stated in the carriage regulations or as stipulated according to custom and usage.
- (2) He shall follow the carrier's instructions with respect to the carriage.

Article 253

The carrier shall carry the passenger and his personal effects which he may keep until arriving in the designated destination on the agreed date, the date stated in the carriage schedules or as is customary.

Article 254

- (1) The carrier shall secure the safety of the passenger throughout the duration of the Carriage Contract and shall be liable for such bodily or material injuries sustained by the passenger as well as for the delay in arrival. He may not deny liability except by proving a force majeure or the passenger's fault.
- (2) The heirs shall be entitled to claim a compensation from the carrier for the damages sustained by their legator, regardless of whether the death was directly after the incident or after the lapse of a period of time.

Article 255

The carrier shall be liable for the actions of persons he employs for performing his obligations under the contract for carriage of persons.

Article 256

Any stipulation which fully or partially exonerates the carrier of liability with regard to bodily injuries sustained by the passenger, shall be deemed null and void.

Article 257

- (1) Apart from the cases of wilful and gross errors by the carriers or its servants, the carrier may provide for being completely or partially exonerated from liability for other than bodily injuries or delay which may be suffered by the passenger.
- (2) The condition exonerating from liability shall be in writing and must have been communicated to the passenger by the carrier.

Article 258

- (1) The carrier shall not be liable for such personal effects which are kept by the passenger nor for any damage thereto, save where the passenger proves that the carrier or his servants were at fault.
- (2) The registered carriage of effects shall be governed by the relevant provisions for the carriage of items.

Article 259

- (1) Where a passenger dies in the course of performance of the carriage contract, the carrier shall take such steps as are deemed necessary to maintain his personal effects until they are delivered to the persons concerned.
- (2) Where any of the persons concerned is present at the place of death, he may intervene to supervise the said steps and request the carrier to deliver to him an admission that the deceased's effects are in his custody.

Article 260

- (1) The carrier may withhold the passenger's personal effects to secure payment of the fare and the price of food or anything else served to him during the performance of the carriage contract.



- (2) The carrier shall have a lien over the price of the personal effects for recovering any sums that may have accrued thereto by reason of the carriage.

### 3. Commission Agency for Carriage

#### Article 261

- (1) Commission agency for carriage is a contract whereby the agent undertakes to enter into an agreement in his name or in the name of his principal with a carrier for the carriage of persons or goods to a certain specified destination, and where necessary to carry out such operations as relate to the carriage.
- (2) Where the commission agent performs the carriage by his own means, he shall be governed by the stipulations of a carriage contract, save where otherwise agreed.

#### Article 262

Except for the provisions set forth in the following Articles, a commission agent for carriage shall be subject to the same provisions as those applicable to a commission agency contract.

#### Article 263

- (1) The commission agent for carriage shall safeguard the interests of his principal and comply with his instructions, particularly such instructions which relate to choosing the carrier.
- (2) the agent may not debit his principal's account with a fare/freight higher than that agreed with the carrier.

#### Article 264

A commission agent for carriage shall guarantee the safety of the passenger or item subject to the carriage.

#### Article 265

- (1) Where the carriage relates to goods, the agent shall as of the time of receiving the items be liable for the perishing, wholly or partially, damage suffered by or delay in the delivery of such goods. He may not deny his liability unless he proves the occurrence of a force majeure or an inherent defect in the items, or a fault of the agent or consignee.

- (2) Where the carriage relates to persons, the agent shall be liable for the delay in arrival of and such injuries or material damage as are suffered by the passenger in the course of performing the carriage contract. The agent may not deny liability except by proving the occurrence of a force majeure or a fault of the passenger.
- (3) In any case, the agent may have recourse against the carrier where relevant.

#### Article 266

Any condition exonerating the commission agent for carriage wholly or partially from liability for bodily injuries suffered by the passenger, shall be null and void.

#### Article 267

- (1) Except in cases of intentional and gross errors committed by the commission agent for carriage or any of his servants or by the carrier or by one of his servants, the commission agent for carriage may stipulate:
  - (a) that he be exonerated wholly or partially from liability arising from the destruction of the item subject to the carriage, damage thereto or delay in the delivery thereof.
  - (b) that he be exonerated wholly or partially from liability arising from the delay in the arrival of the passenger or bodily injuries sustained by him.
- (2) The stipulation of exoneration from liability shall be in writing and must have been notified to the principal or the passenger.

#### Article 268

- (1) The principal or passenger may have direct recourse against the carrier to claim damages which resulted from failure to perform the carriage contract or defective performance or delay. In such case, the commission agent for carriage must be included in the case.
- (2) The carrier may have direct recourse against the carrier to claim from him damages for injuries suffered by him as a result of carrying out the carriage contract.
- (3) The consignee shall have direct recourse against both the carrier and the commission agent with respect to the rights arising from the carriage contract.

Article 269

Where the commission agent pays the fare/freight to the carrier, he shall subrogate him in his rights.

4. Prescription

Article 270

- (1) Every claim arising from a contract for carriage of goods or a commission agency contract for carriage of goods shall lapse after a period of one year.
- (2) Such prescription shall be applicable with respect to claims for liability resulting from total destruction from the day on which the delivery was due to take place and for the delay, damage or partial destruction from the date of delivery or from the date on which the consignee was notified of putting the item at his disposal.

Article 271

Every law suit arising from a contract for carriage of persons or a contract for commission agency for carriage of persons shall lapse after three years.

Article 272

The prescription provided for in the preceding two Articles shall not be invoked by any person who has committed an intentional fault or gross error.

Article 273

Every agreement made in contravention of the provisions set forth in the preceding three Articles shall be deemed null and void.

PART THREE

COMMERCIAL AND BANKING OPERATIONS

Article 274

The provisions of this Part shall be applicable to transactions concluded by banks with their customers whether they are traders or non-traders whatever may be the nature of such transactions.

CHAPTER ONE

MONEY DEPOSIT

Article 275

A money deposit is a contract which vests possession of the deposit money unto the bank and authorises the bank to dispose thereof in keeping with its professional activity with an obligation to return an equal amount thereof to the depositor. The deposit shall be returned in the same currency as that of the original deposit.

A condition may be laid down for the payment of interest for a money deposit, in which case the provisions of Article 76 (4), (5) and (6) shall be applicable.

Article 276

- (1) The bank shall open an account for the depositor wherein shall be entered all the transactions concluded between the bank and the depositor or between the bank and a third party for the account of the depositor.
- (2) Such transactions which both parties have agreed not to enter in the account shall not be entered therein.

Article 277

- (1) A deposit of money contract shall not vest the depositor with a right to draw from the bank sums unless he has a credit account.
- (2) However, if the bank conducts transactions for the depositor's account with the result that the balance becomes credited as regards the bank, the latter shall advise the depositor in order to make a settlement of his position.

Article 278

- (1) Save where otherwise agreed, the money deposit shall be returned immediately upon request. Meanwhile, the depositor may at any time dispose of the balance or any part thereof.

- (2) The foregoing right may be conditional upon the sending of a prior notice or the expiry of a certain time limit.

Article 279

The bank shall send a statement of account at least once every three months except where custom and usage or an agreement stipulates that a statement of account shall be sent more than once during such period. The statement shall give a copy of the account and the balance after the last movement in the said account.

Article 280

Unless otherwise agreed, the deposit payments and withdrawals shall be effected at the bank's head office or the branches of the bank.

Article 281

Save where otherwise agreed, where the depositor has several accounts in one bank or the branches of the same bank, each such account shall be independent of the others.

Article 282

Where the bank issues a passbook, it shall be in the name of the person in whose favour it has been issued. Payments and withdrawals shall be entered therein. The particulars entered in the said passbook shall if signed by a bank officer be evidence for proving the said particulars as regards the relationship between the bank and the person in whose favour the passbook has been issued. Any agreement to the contrary shall be null and void.

Article 283

A bank may open a joint account for two or more persons equally between them, save where otherwise agreed and provided that the following provisions are complied with:

- (1) A joint account shall be opened by all its owners or by a person holding a power of attorney granted by the owners of the account and duly legalised by the relevant authority. Withdrawals from the account shall be governed by the agreement of the owners of the account.

- (2) Where the balance of a co-owner of a joint account is subject to an attachment, such attachment shall be applicable to the share of the distrainee of the balance of the account as of the day on which the bank is given notice of the attachment. In this event, the bank shall suspend withdrawing from the joint account to the extent of the equivalent of the share subject to the attachment. The co-owners of the joint account or their representative shall be informed of the attachment within not more than five days.
- (3) Upon effecting a set-off between various accounts of one of the co-owners of the joint account, the bank may not include such joint account in the set-off save with the written consent of the other co-owners.
- (4) Where a co-owner of a joint account dies or becomes legally disqualified, the other co-owners shall give notice to the bank of whether or not they wish to continue the account, within not more than ten days of the date of the death or disqualification of the said person. The bank shall thereupon suspend the withdrawals from the joint account until a successor is legally appointed.

## CHAPTER TWO

### DEPOSIT OF SECURITIES

#### Article 284

A bank may not use nor exercise the rights arising from such securities which are deposited therewith except for the interest of the depositor unless otherwise agreed upon.

#### Article 285

- (1) In safekeeping the securities deposited with it, the bank shall exercise such care as is exercised by a depositary who receives remuneration. Any agreement which exonerates the bank from exercising such care shall be null and void.
- (2) The bank may not relinquish possession of the said securities unless there is a reason necessitating such behaviour.
- (3) The depositor shall pay the remuneration agreed upon or that which is determined by usage, in addition to the necessary expenses.

Article 286

- (1) Save where otherwise agreed the bank shall receive the interest, dividends or value of the security, when it is redeemed, and every other sums accruing in connection with the security.
- (2) Such amounts shall be placed at the depositor's disposal and shall be credited to his account.
- (3) The bank shall conduct the necessary transactions for safeguarding the rights relating to the securities.

Article 287

Cheques and other commercial papers deposited with the bank, whether or not they are drawn on the bank or payable by the bank, shall not be subject to drawing except after payment or collection of the value thereof.

The bank shall collect these cheques and commercial papers in the name of the account holder and for his benefit.

The bank shall have the right to strike off any entry that may have been made unless the amount thereof has been paid or collected.

Article 288

- (1) The bank shall inform the depositor of any matter relevant to the security that requires his approval. In case of an emergency or fear of a loss of an established right in the security, such notification may be made by a telegram. Where the instructions of the owner of the security are not received at the appropriate time, the bank shall dispose of the right for the account of the said owner.
- (2) The depositor shall bear the costs of the transactions conducted by the bank at the request of the depositor in addition to the commissions.

Article 289

- (1) The bank shall return the securities deposited at any time at the request of the depositor with due regard for the time needed for the preparation of the papers for such return, except in the following cases:
  - (a) If the bank has the right to withhold the securities until it recovers its entitlements from the depositor.
  - (b) If it is empowered to have a lien over the safekeeping of movable properties.

- (c) If it has procured attachment procedures so that the securities remain kept under its possession.
  - (d) If it has obtained an attachment to keep the securities under its possession or challenged another person seeking the delivery thereof to the depositor in pursuance of a right thereupon.
  - (e) If the deposit contract is replaced by another contract.
  - (f) If the depositor has been declared bankrupt following the deposit.
- (2) Return of the securities shall be effected in the same place wherein the deposit was effected. The bank shall return the same securities which had been deposited unless both parties agreed or the law otherwise provides.

#### Article 290

The bank shall have a lien as security for recovering its rights arising from the safekeeping and the expenses of the subsequent transactions conducted for preservation of the rights represented by the securities deposited therewith.

#### Article 291

The securities shall be returned to the depositor , his successors or those appointed by such persons even though there is reference in the securities that they are owned by third parties.

#### Article 292

If a person claims that the deposited securities have matured, the bank shall directly inform the depositor and shall refrain from returning the securities thereto pending the settlement of the existing dispute in respect thereof.

### CHAPTER THREE

#### RENTAL SAFE DEPOSIT BOXES

#### Article 293

Rental of safe deposit boxes is a contract whereby the bank undertakes to place a certain specified safe deposit box at the disposal of the lessee to be used for a certain specified period against payment of a certain remuneration.



Article 294

- (1) The safe deposit box shall have two locks each of which shall have a different key so that the bank shall deliver one to the lessee and the other shall be maintained by the bank. Apart from the bank and the lessee, the key of the safe deposit box may not be delivered to another person.
- (2) The key which shall be delivered to the lessee shall remain as the property of the bank and the former shall be obliged to return it to the bank on the termination of the rental arrangement.
- (3) The bank may use such other methods as an automatic control system or plastic cards for this purpose.

Article 295

The bank may not permit any person other than the lessee or his agent to use the safe deposit box.

Article 296

Save where otherwise agreed, a lessee may not sublet the safe deposit box or part thereof nor may he assign the lease to another.

Article 297

- (1) Save where otherwise agreed, when a safe deposit box is leased to several lessees, each one of them may use it separately.
- (2) Where the lessee or one of the lessees dies the bank may not, after becoming aware of the death, give permission for the opening of the safe deposit box except with the approval of all parties concerned or pursuant to a verdict of the President of the High Civil Court or one of the Puisne Justices who is designated for this purpose.

Article 298

The bank shall undertake the maintenance of the safe deposit box to ensure the preservation and safety thereof, and shall maintain a register in which shall be recorded the dates and times of opening the safe deposit box by the lessee.

Article 299

- (1) The lessee of a safe deposit box may not place therein articles which are detrimental to the safety of the bank or that of the other safe deposit boxes.

- (2) If it is established that the safe deposit box is in danger or that it contains dangerous items, the bank shall give an immediate notice to the lessee in order to appear and to empty it of the dangerous items. If the lessee fails to be present on the fixed date, the bank may request the President of the High Civil Court or the Puisne Justice designated for this purpose to give it a permission to open the safe deposit box and empty it or withdraw the dangerous items contained therein in the presence of the person nominated by the President of the High Civil Court or the Puisne Justice designated for this purpose. A statement of the occurrence shall be prepared and shall be signed by the bank's representative who has opened the safe deposit box and the person nominated by the President of the High Civil Court or the designated Puisne Justice of the Court in order to attend the opening of the safe deposit box. The contents of the safe deposit box shall be mentioned in the said statement.

Where the threat does not allow any delay, the bank may open the safe deposit box at its own risk and shall empty the contents thereof or withdraw the dangerous items therefrom without notifying its lessee or obtaining the Court's permission.

#### Article 300

- (1) Where the lessee fails to pay the rent of the safe deposit box on due dates of payment, the bank may after the expiry of three months of giving notice thereto for payment by virtue of a registered letter with an acknowledgement slip consider the contract to have been terminated by the force of law without the need for filing legal action.
- (2) Where the term of the contract expires or where it has been deemed to be terminated according to the preceding Paragraph, the bank shall recover the safe deposit box after giving notice to the lessee requiring him to report to the bank to empty its contents on the date and at the time stated in the notice.
- (3) Where the lessee fails to report to the bank on the date set in the notice or where he reports to the bank but refuses to empty the contents of the safe deposit box, the bank may request the President of the High Civil Court or the Puisne Justice of the Court designated for this purpose to grant it permission and empty the contents thereof in the presence of the person nominated for this purpose.

A statement of the occurrence shall be prepared and be signed by the representative of the bank who has opened the safe deposit box and by the person designated by the President of the High Civil Court or by the designated Puisne Justice appointed for this purpose to attend the opening thereof, and the contents of the said safe deposit box shall be mentioned in the statement.

- (4) The President of the High Civil Court or the Puisne Justice designated for this purpose, shall be empowered to order the deposit of the contents of the safe deposit box with the bank or in the Court Treasury.

#### Article 301

The bank shall have a lien over the amounts kept in the leased safe deposit box or over the price resulting from the selling of the contents thereof for the settlement of the fees and charged owed thereto.

#### Article 302

- (1) A precautionary attachment or execution attachment may be placed on the safe deposit box.
- (2) The attachment shall be placed by notifying the bank of the contents of the instrument whereby the attachment is to take place while instructing it to state whether it leases a safe deposit box for the distrainee. Should the bank declare that this is the case, it shall immediately upon receiving a copy of the attachment statement bar the lessee from using the safe deposit box. The bank shall be left with a copy of the attachment statement and the lessee of the safe deposit box shall be given another copy.
- (3) If the attachment is of a precautionary nature, the lessee may apply to the Court seeking the lifting of the attachment or authorise him to take some of the contents of the safe deposit box.
- (4) Where the attachment is of an executory nature, the execution officer shall after giving notice to the lessee of the date set for opening the safe deposit box. Where the lessee fails to report to the bank on time, the execution officer shall forcibly open the safe deposit box after the deposit by the distrainer of the fees for the opening thereof and restoration to its original state. Then, he shall empty the contents thereof and make an inventory thereof in the presence of the bank's representative and distrainer, if present. The contents of the safe deposit box shall be sold in conformity with the provisions laid down in the Civil and Commercial Procedures Act, as amended.

- (5) Where the safe deposit box contains papers or documents that are not included in the compulsory sale, they shall be delivered to the lessee if he is present at the time of opening the safe deposit box, otherwise the execution officer shall deliver them to the bank after placing them in a safe place under the seal of the said officer and that of the bank's representative for delivery to the persons entitled thereto.
- (6) The distrainer shall pay to the bank a sufficient sum to ensure the settlement of the rent of the safe deposit box during the period of attachment.

#### Article 303

Except for the cases provided for in the Law, the bank may not open the safe deposit box nor empty the contents thereof except with the permission of the lessee and in his presence or in pursuance of a verdict issued in this respect by the President of the High Civil Court or any Puisne Justice designated for this purpose.

### CHAPTER FOUR

#### BANK TRANSFERS (ACCOUNT TRANSFERS)

#### Article 304

- (1) A bank transfer is a transaction whereby the bank debits the account of the person who has ordered the transfer in writing and credits another account accordingly.
- (2) This transaction may be used to effect the following:
  - (a) transfer of a specified sum from one person to another each of whom has an account with the same bank or with two different banks.
  - (b) transfer of a specified sum from one account to another both of which are opened in the name of the person ordering the transfer with the same bank or with two different banks.

This transaction shall include making a set-off and a transfer.

- (3) The agreement between the bank and the person ordering the transfer shall regulate the conditions of issuing the order. However, the transfer order may not be for the bearer nor to the order of a certain person.

Article 310

- (1) Where the consideration for payment is insufficient and if the transfer order is made directly by the person ordering the transfer, the bank may refuse to execute the order , provided that it shall give prompt notice of such action to the person making such order.
- (2) Where the transfer order is made by the beneficiary the bank will credit the partial consideration to his account unless this is opposed by the beneficiary, and the bank shall make an entry on the transfer order with regard to recording the partial consideration or the rejection made by the beneficiary.
- (3) The person making the transfer order shall have the right to dispose of the partial consideration if the bank refuses to implement the transfer order or should the beneficiary refuse the partial consideration in accordance with the above two Paragraphs.

Article 311

- (1) If the bank fails to execute the transfer order on the first business day following presentation, the order shall be deemed to the extent of the amount that is not executed as null and void and shall be returned to the person who has presented it against the issue of a receipt.
- (2) If a longer period is agreed upon, the transfer order shall be added to the orders which shall be presented in the following days during such period.

Article 312

The debt for the settlement of which the transfer order has been issued, shall remain valid together with its guarantees and attachments until the date of actually crediting the amount thereof in the beneficiary's account.

Article 313

- (1) Where the beneficiary is adjudged bankrupt the person making the order may suspend the execution of the transfer order even where the beneficiary has received it in person.
- (2) The declaration of the bankruptcy of the person making the transfer order shall not bar the execution of the transfer orders which had been presented to the bank prior to the passing of the judgement for the adjudication of bankruptcy unless the Court issues a verdict to the contrary.

- (3) Where the person making the transfer order dies, the bank shall refrain from executing the transfer orders issued therefrom with effect from the date of its knowledge of the death.
- (4) If the beneficiary dies, the bank shall continue to execute the transfer orders to his heirs.

#### CHAPTER FIVE

#### OPENING OF CREDITS

##### Article 314

- (1) The opening of a credit is a contract whereby the bank places at the disposal of the beneficiary, whether directly or indirectly, a method of credit within the limits of a specified sum.
- (2) A credit is opened for a definite or indefinite term.

##### Article 315

- (1) Where a credit is opened for an indefinite term, the bank may at any time cancel it provided that notice of cancellation is sent to the beneficiary at least 15 days before the date set for the cancellation.
- (2) Any agreement which vests the bank with a right to cancel an indefinite term credit without need for notice or at a shorter notice than that specified in the preceding paragraph shall be null and void.

##### Article 316

The bank may not cancel the credit before expiry of the agreed term except where the beneficiary dies or an attachment is placed upon his property or if he ceases to make payment without a judgement being passed for adjudicating his bankruptcy or his commission of a gross error in using the indefinite term credit opened in his favour.

#### CHAPTER SIX

#### DOCUMENTARY CREDITS

##### Article 317

- (1) A documentary credit is a contract whereby a bank undertakes to open a credit upon an application from a customer, who is called the person ordering the opening of the credit, in favour of a third party, called the beneficiary, secured by the documents representing the goods transported or intended for carriage.

- (2) A documentary credit contract is deemed to be independent of the contract which caused the opening of the credit. Meanwhile, the bank shall remain a stranger to this contract.

#### Article 318

A bank which opens a credit shall perform the conditions of payment, acceptance and discount as agreed in the contract for opening the credit if the documents conform to the conditions and particulars set down in the contract.

#### Article 319

- (1) A documentary credit may be revocable or irrevocable.
- (2) A documentary credit shall be revocable unless expressly agreed that it shall be irrevocable.
- (3) A documentary credit may be divisible , negotiable or non-negotiable or non-transferrable.

#### Article 320

A revocable documentary credit shall not create any obligations on the bank towards the beneficiary. The bank may at any time amend or cancel it of its own initiative or at the request of the person who ordered the opening of the credit without the need for notifying the beneficiary, provided that the amendment or cancellation is made in good faith and at an opportune time.

Where the shipping documents have been presented and found conforming to the particulars and conditions of the contract for opening the credit within the period of the contract and prior to the request for cancellation, the bank and the person who ordered the opening of the credit shall be liable towards the beneficiary.

#### Article 321

- (1) Where the documentary credit is irrevocable the obligation of the bank shall be absolute and direct towards the beneficiary and to any bona fide holder of the document drawn in performance of the contract which caused the opening of the credit.
- (2) An irrevocable documentary credit shall not be cancelled nor amended except with the agreement of all the interested parties.

- (3) Except for the public holidays, the validity of the credit shall not extend beyond other than bank holidays even when the expiry of the validity coincides with the date of the cessation of business of the bank due to a force majeure unless there is an express authorisation to that effect from the person ordering the opening of the credit.

#### Article 322

- (1) An irrevocable documentary credit may be confirmed by one bank to another which shall, in turn, be under obligation directly towards the beneficiary.
- (2) A notice for the opening of an irrevocable documentary credit sent to the beneficiary through another bank shall not be deemed as a confirmation by this bank of the documentary credit.

#### Article 323

- (1) Precise details shall be indicated in the papers of the application for the opening of the documentary credit, its confirmation or notification the documents against which the transactions of payment, acceptance or discounting shall be conducted.
- (2) the bank shall ascertain that the documents are in conformity with the instructions of the person who ordered the opening of the credit as contained in the letter of credit sent to the beneficiary.
- (3) Where the bank rejects the documents it shall immediately send notice of rejection to the person who ordered the opening of the credit, indicating the discrepancy noticed.

#### Article 324

- (1) The bank shall not be liable if the documents presented appear to conform to the instructions received from the person who ordered the opening of the credit.
- (2) The bank shall not bear any liability with regard to specifying the goods for which the credit has been opened nor in respect of their quantity, weight, external condition, wrapping or value nor shall it be held liable with regard to performance by the consignors or insurers of their obligation.



Article 325

- (1) The bank may not divide the execution of the documentary credit unless so authorised by the person who opened the credit.
- (2) The beneficiary shall not assign all or part of the documentary credit to another person or other persons unless he is authorised to do so by the bank and is expressly provided for in the letter of credit.
- (3) In addition, the transfer shall only be made once unless the contrary is provided for in the contract for opening the documentary credit.
- (4) The transfer shall be effected by endorsing the letter of credit if it is conditional or by delivery thereof if it is for the bearer . However, if it is nominal, the procedures governing bill of exchange shall be applicable.

Article 326

Where the person who ordered the opening of the credit fails to pay to the bank the value of the shipping documents conforming to the conditions of the opening of the credit within three months from the date of being notified of the date of arrival of the said documents, the bank may sell the goods by adopting the method of execution on articles which are the subject to a commercial mortgage.

CHAPTER SEVEN

DISCOUNTS

Article 327

- (1) A discount is a contract whereby a bank advances to the beneficiary of a commercial instrument which has not matured the value stated therein in consideration of transferring the value of such instrument to the bank.
- (2) the bank shall deduct from the amount paid to the beneficiary on account of the discount interest on the amount of the instrument in addition to commission. An agreement may be entered into for effecting the discount in consideration of a total sum.

Article 328

- (1) Interest is calculated on the basis of the time which lapses until the maturity date of the instrument or on the basis of a shorter period in mortgage transactions or other transactions involving an undertaking of the beneficiary of the discount to repay what he has received before the maturity date of the instrument.
- (2) Commission shall be estimated on the basis of the value of the document.
- (3) A minimum level of interest and commission may be fixed.

Article 329

A beneficiary of the discount shall repay to the bank the nominal value of the instrument which has not been paid.

Article 330

- (1) The bank shall have all the rights which arise from the instrument vis-a-vis the original debtor, the beneficiary of the discount and the other obligees.
- (2) Furthermore, the bank is vested with a separate right vis-a-vis the beneficiary of the discount to recover the sums which it has placed at his disposal as well as charging interest and commission. Without prejudice to the provisions with respect to the current account, the bank shall exercise this right within the limits of the unpaid instruments whatever may be the reason for abstaining from payment of the discounted instruments.

CHAPTER EIGHTLETTER OF GUARANTEEArticle 331

A letter of guarantee is an undertaking issued by a bank at the request of one of its customers (the person making the order) to pay a certain specified sum or a sum that can be determined in favour of the beneficiary where payment is requested within the fixed period of the letter. The letter of guarantee shall state the purpose for which it has been issued.

Article 332

The bank may require the production of a security against the issue of a letter of guarantee. The security may be in cash or in the form of financial instruments or commercial papers, goods or an assignment by the applicant for the letter of guarantee of his right vis-a-vis the beneficiary in favour of the bank.

Article 333

Save with the approval of the bank, a beneficiary may not assign his right which arose from the letter of guarantee to a third party.

Article 334

The bank may not refuse payment to the beneficiary on grounds relating to the bank's relationship with the applicant for the letter of guarantee or to the relationship between the applicant for the letter of guarantee with the beneficiary.

Article 335

- (1) The bank shall be discharged of liability towards the beneficiary if within the validity period of the letter of guarantee no request for payment is received from the beneficiary, unless it had been expressly agreed to renew the term thereof.
- (2) the bank shall, upon the expiry of the term of the letter of guarantee, return the deposit provided by the person ordering the said letter for obtaining thereof.

Article 336

Where the bank pays to the beneficiary the sum agreed in the letter of guarantee, it shall subrogate him for recourse against the person making the order for the letter of guarantee to the extent of the amount actually paid.

CHAPTER NINE

CURRENT ACCOUNT

Article 337

A current account is a contract whereby two persons agree to cause entries to be made in an account by making mutual and overlapping payments of debts arising from operations effected between them such as the delivery of monies, property or negotiable instruments capable of ownership and others; and to replace the settlement of each separate payment by a final settlement resulting in the balance of the account being closed.

Article 338

- (1) All debts which arise from such business relations as are effected between both parties to the account shall by the operation of the law be entered in the current account, save where such debts are secured by legally required deposits, agreement or if it has been agreed to exclude the debts from the account.
- (2) However, debts secured by contractual securities, whether they have been established by the debtor or a third party may be entered in the current account, where all the interested parties have expressly agreed on such measure. The security in this case shall be applicable to the probable debit balance to an extent not exceeding the secured right.
- (3) Where the law provides for certain specified measures for concluding the security or for being admitted in evidence towards third parties, it shall not be transferred to the balance and may not be admitted in evidence except from the date of carrying out the aforesaid measures.

Article 339

- (1) If the items of the account include cash debts denominated in various currencies or dissimilar things, the parties may agree on the inclusion thereof in the account, provided that they shall be entered under independent sections taking into account the similarity in the forms of payment included and the two Parties shall expressly agree on maintaining the unity of the account in spite of its various sections.
- (2) The balances of the sections referred to in the preceding Paragraph shall be transferrable so that it becomes possible at the time fixed by the two parties or upon no later than closing the account to make a set-off between them for producing one balance.

Article 340

- (1) Where a time limit has been fixed for closing the account, it shall be closed on the expiry of the said limit. It may be closed prematurely by agreement of both parties.
- (2) Where a time limit is not set for the current account it may be closed at any time as desired by either party with due consideration for the time limits for notices as agreed or as is customary.
- (3) In all cases, the account shall be closed on the death of either party, his becoming disqualified or being declared bankrupt or insolvent.

- (4) The balance shall be calculated upon closing of the account and the debit balance shall become immediately payable unless the two parties have agreed otherwise or if certain transactions that should have been entered have been conducted and the entry thereof results in altering the amount of the balance.

#### Article 341

Either party to the account may dispose of his/its credit balance that may be shown at any time unless there is an agreement to the contrary.

#### Article 342

No set off shall be made between an item in the current account and another item in the same account.

#### Article 343

If the payment made results from a right that no longer exists or the value thereof has been reduced for a subsequent reason to making the entry in the account, the entry thereof shall be cancelled or reduced and the account shall be amended in accordance with the above.

#### Article 344

- (1) Debts which are entered into a current account shall not be subject to the rules of prescription and payment of interest as they were applied prior to their entry into the account.
- (2) Interest shall be charged on the debit balances at the agreed rate between the bank and the account holder. If a specific rate is not agreed upon, interest shall be charged as determined by the Bahrain Monetary Agency or according to the banking practices.
- (3) Interest shall be charged on interest payments from the date of entering them in the current account while it is in operation while giving due regard for the periods of time specified by custom and usage for entering interest in the current account, unless there is an agreement to the contrary.

#### Article 345

- (1) The common rules shall apply to the prescription of the debit balance and interest charged thereupon.
- (2) The legally prescribed interest shall be applicable to the debit balance from the date of closing the account unless there is an agreement to the contrary.

Article 346

- (1) The totality of current account items is indivisible before closure of the account or extraction of the final balance. The gross set-off of all items of the account shall arise only from the closure of the account.
- (2) However, the creditor of either party to the account may seek the placement of an attachment during the operation of the account on the credit balance of his debtor at the time of placing the attachment.

In this event, the person with whom the account is opened shall prepare a provisional balance of the account to show the distrainee's position at the time of placing the attachment.

- (4) Where it is agreed to bar the distrainee from disposing of his credit balance during the operation of the account, the attachment shall be placed only with regard to the final balance which appears to be in his favour on the closure of the account.

Article 347

- (1) Where one of the parties to the account dies, no liability shall be brought against the group of creditors in terms of any mortgage that has been decided on the properties thereof after the date fixed by the Court for suspending payment for security of a debt owed by the probable balance to the extent of the debit balance.
- (2) Legal action may be brought against the group of creditors with respect to the mortgage in relation to the difference, if any, between the amount of the debit balance existing at the time of determining the mortgage and the amount of the balance at the time of closing the account, unless it is proved that the contracting party was aware at the time of deciding the mortgage that the debtor ceased to make payment.

Article 348

- (1) Where the proceeds of discounting a commercial paper in the current account but the value thereof is not paid on the date of maturity the person discounting the bill may cancel the entry by a counter entry, even though the presenter has been declared bankrupt.
- (2) A counter entry means entry of a sum equal to the value of the commercial paper plus legal interest from the date of maturity and expenses debited to the current account.

- (3) No counter entry may be made except with regard to such commercial papers as have not been paid on their maturity dates, and any agreement to the contrary shall be null and void.

Article 349

- (1) Legal action regarding the correction of the account because of errors, omissions from or repetitions of the entry or other corrections shall not be admissible after the lapse of one year from the date of receiving the statement of account relating to the liquidation, which shall be sent by registered mail accompanied by a delivery note.
- (2) In all cases a legal action regarding a current account shall prescribe after the lapse of five years, which shall commence from the date of closing the account.

PART FOUR

COMMERCIAL PAPERS

CHAPTER ONE

BILLS OF EXCHANGE

Section One: Creation of Bills of Exchange:

Article 350

A bill of exchange shall contain the following particulars:

1. The term bill of exchange written in the text of the instrument in the language in which it is written.
2. An unconditional order to pay a certain sum of money.
3. the name of the obligor ,i.e.the drawee.
4. The name of the person to whom or to whose order payment shall be made (the beneficiary).
5. The place of payment.
6. Date of maturity.
7. Date of making the bill of exchange and place thereof.
8. Signature of the maker, i.e. of the drawer.

Article 351

A bill of exchange which does not contain any one of the particulars detailed in the preceding Article shall not be deemed as a bill of exchange, except in the following cases:

- (1) If the date of maturity is not stated therein, the bill of exchange shall be deemed to be payable at sight.
- (2) If the place of payment or the domicile of the drawee is not stated therein, the place stated next to the drawee's name shall be deemed as the place of payment and also the drawee's domicile. A bill of exchange shall be payable at the drawee's domicile if no other place has been stipulated.
- (3) If the place of making the bill is not stated, it shall be deemed to have been made at the place indicated next to the name of the drawer.

Article 352

- (1) A bill of exchange may be drawn to the order of the drawer himself.
- (2) It may be drawn on the drawer.
- (3) It may be drawn for the account of a third party.

Article 353

- (1) A drawer of a bill of exchange payable at sight or after a period of time from the date of sight may set down the condition for payment of interest in respect of the aforesaid sum.
- (2) The stipulation for payment of interest in other types of bills of exchange shall be null and void.
- (3) The rate of interest shall be shown in the bill of exchange. However, if the rate of interest is not stated, the stipulation shall be deemed null and void.
- (4) In the absence of any other date, the calculation of interest shall run from the date of making the bill of exchange.

Article 354

- (1) When the amount of a bill of exchange is expressed in words and also in figures, and if there is a discrepancy between the two, the sum denoted in words shall be the payable amount.



- (2) Where the sum is expressed several times in words and also in figures, and if there is a discrepancy between them, the lesser amount denoted shall be payable.

#### Article 355

The obligations of legally incompetent persons who are not traders and of persons lacking legal capacity arising out of subscribing their signatures on a bill of exchange as drawers, endorsers, acceptors, accommodation parties or in any other capacity shall be null and void with regard to themselves only. They may invoke such nullity against any holder of such bill of exchange.

#### Article 356

Where one of the signatures subscribed on a bill of exchange is that of a person who has no capacity to incur liability, or where the signature does not, on any ground, bind the signatory thereof or the persons purported to have signed it, the liabilities of the other signatories shall nevertheless be valid

#### Article 357

- (1) The capacity of the obligor under the bill of exchange is determined according to the law of his country. Should such law make reference to the law of another country, the latter law shall be applicable.
- (2) The obligation of a person, who under the law of his country lacks legal capacity, shall nevertheless be held valid if he has subscribed his signature in the territory of a state under whose laws he is deemed to have full legal capacity.

#### Article 358

- (1) A person who without authority signs a bill of exchange on behalf of another shall be personally liable thereunder. When he discharges the said liability, the rights which would have devolved to the person on whose behalf he purported to have acted shall devolve to him.
- (2) The foregoing provision shall also apply to a person who acts ultra vires.

#### Article 359

- (1) A drawer of a bill of exchange shall guarantee the acceptance and payment thereof.

- (2) The drawer may stipulate to be relieved of guaranteeing acceptance; and every condition exempting him of guaranteeing payment shall be null and void.

Section Two : Endorsement :

Article 360

- (1) A bill of exchange is negotiable by endorsement even when it does not contain an express stipulation that it is drawn 'to order'.
- (2) A bill of exchange is not negotiable when the drawer stipulates therein that it is not 'to order' or any other phrase purporting the same meaning, save in accordance with the provisions governing the transfer of a right and the ensuing effects thereof.
- (3) Endorsement may be made to the drawee regardless of whether he accepted the bill of exchange or not. Endorsement may also be made to the drawer or to any other obligor. All the above persons may re-endorse the bill of exchange.

Article 361

- (1) Without prejudice to the provisions of Article 364, endorsement may not be subject to a condition, and every condition applicable to the endorsement shall be null and void.
- (2) A partial endorsement shall be illegal.
- (3) An endorsement for the bearer shall be deemed as an endorsement in blank.

Article 362

An endorsement shall be written on the bill of exchange itself or on a piece of paper attached thereto and be signed by the endorser. It is permitted that the endorsement shall not contain the name of the beneficiary. An endorsement may also be by the endorser's signature (blank endorsement), in which case it shall be written on the back of the bill of exchange or on the attached piece of paper.

Article 363

- (1) An endorsement shall carry all the rights arising from a bill of exchange.

- (2) In case of a blank endorsement, the holder may:
  - (a) fill in the blank by writing his name or another person's name.
  - (b) re-endorse the bill of exchange in blank or to another person.
  - (c) deliver the bill of exchange to another person without filling in the blanks and without endorsing it

Article 364

- (1) Unless otherwise provided, the endorser shall be held liable for the acceptance and payment of a bill of exchange.
- (2) The endorser may prohibit its re-endorsement, in which case he shall not be liable to any person holding the bill of exchange by subsequent endorsement.

Article 365

- (1) The possessor of a bill of exchange shall be deemed to be its lawful holder when he proves that he is entitled thereto by successive endorsements, even when the last was a 'blank endorsement'. A 'crossed endorsement' shall be null and void in this regard. When the blank endorsement is followed by another endorsement, the signatory on this last endorsement shall be deemed to be the person to whom the right to the bill of exchange has passed by blank endorsement.
- (2) If a person loses possession of a bill of exchange the holder shall not be bound to surrender it if he proves his right thereto in accordance with the preceding Paragraph unless he has acquired it in bad faith or has committed a gross fault to acquire it.

Article 366

Without prejudice to the provisions of Article 355, the debtor who is sued for a bill of exchange may not plead with any defence against the holder on his personal relationship with the drawer or prior holders unless the holder's intention at the time of acquiring the bill of exchange was to cause damage to the debtor.

Article 367

- (1) Where the endorsement stipulates 'value for collection', 'value for receipt', 'by procuration' or any similar expression indicating delegation of powers, the holder may exercise all the rights arising from the bill of exchange but may not endorse it except as an agent.
- (2) In such case the obligors may not plead against the holder except with the defences that may be pleaded against the endorser.
- (3) The procuration indicated in the endorsement 'by procuration' shall not lapse except by the death of the principal or placement of an attachment thereupon.

Article 368

- (1) Where the endorsement contains the expression 'value for security', 'value is a pledge' or any similar expression indicating a mortgage, the holder of a bill of exchange may exercise all the rights arising from the said bill of exchange. If he endorses it, the endorsement shall be deemed as made by procuration.
- (2) The obligors under the bill of exchange may not bring against the holder a defence based on their personal relationship with the endorser, save when at the time of acquiring the bill the holder intended to cause damage to the debtor.

Article 369

- (1) An endorsement that is subsequent to the date of maturity shall have the effects of an endorsement previous thereto. Meanwhile, an endorsement subsequent to pleading for non-payment or occurring after the expiry of the legally prescribed period for the protest shall only have the effects of the transfer of rights.
- (2) An undated endorsement shall be presumed to have taken place before the expiry of the time limit specified for making the protest unless the opposite is proved.

Article 370

An endorsement may not be predated. A predated endorsement shall be deemed to be a forgery.

Section Three : Consideration for Payment:

Article 371

The drawer of a bill of exchange or he for whose account a bill of exchange is drawn shall make available with the drawee sufficient funds to pay the value thereof. However, a person who has drawn for the account of another shall not be exonerated from personal liability towards its endorsees and holders and no others.

Article 372

Provision for payment is deemed to be available when, on the maturity date of the bill of exchange, the drawee is indebted to the drawer or to the person who ordered the drawing of the bill of exchange in a certain specified sum of money payable and at least equal to the sum of the bill of exchange.

Article 373

- (1) The acceptance of a bill of exchange presupposes the availability with the acceptor of provision for payment. The contrary to the above presupposition may not be proved in the relationship of the drawee with the holder.
- (2) In case of denial, regardless of whether or not the bill of exchange has been accepted, the onus of proof rests solely with the drawer that he had with the drawee on the date of maturity of the bill of exchange sufficient funds to pay its value. If he fails to do so, he shall be liable for payment, even when he protested after the prescribed time limit. When the drawer proves that the provision was and remained available until the time limit for the protest, he shall be discharged of liability to the extent of such provision, save where it had been used for his benefit.

Article 374

- (1) Title to the consideration for payment passes by operation of the law to the consecutive holders of the bill of exchange.
- (2) Where the consideration is less than the amount of the bill of exchange, the holder is vested with the same rights with regard to the shortfall as those vested in him with regard to the entire consideration. This provision applies where the consideration for payment is a debt, subject to a chose in action, is uncertain or is not payable on the maturity date of the bill of exchange.

Article 375

The drawer shall, even when protesting after the statutory time limit, deliver to the holder of the bill of exchange the documents which enable him to receive the consideration for payment. If the drawer is declared bankrupt, the receiver shall do so. All expenses incurred shall be for the account of the holder of the bill of exchange in all cases.

Article 376

When the drawer is declared bankrupt, even before the maturity date of the bill of exchange, the holder shall to the exclusion of the drawer's other creditors receive his rights from the payment consideration which was validly made with the drawer.

Article 377

- (1) If the drawee is adjudicated bankrupt and the payment consideration was a debt due from him, it shall be included in the assets of the bankruptcy.
- (2) Where the drawee has in possession on behalf of the drawer goods, negotiable instruments, securities or such other properties which may be recovered under the bankruptcy provisions, and if such assets were destined expressly or implicitly for payment of the consideration of the bill of exchange, the holder shall have priority in receiving his right from the value thereof.

Article 378

- (1) Where several bills of exchange have been drawn on a consideration insufficient to accommodate all of them, regard shall be had to the order of the dates of their drawing for payment of the rights of several holders from the said consideration. The holder of the bill of exchange with a date preceding those of the other bill of exchange shall have priority over the others.
- (2) Where the bill of exchange have been drawn on the same date, the bill bearing the drawee's acceptance shall have priority.
- (3) Where none of the bills of exchange bears the drawee's acceptance, priority shall be for the bill for the payment of which the consideration was allocated.
- (4) Bills of exchange containing a proviso of non-acceptance shall rank last in the order of priority.

Section Four: Acceptance :

Article 379

The holder or possessor of a bill of exchange may, up to the date of its maturity, present it to the drawee at his domicile for acceptance.

Article 380

- (1) The drawer of a bill of exchange may stipulate therein that it be presented for acceptance at a specified date or may not specify a date at all.
- (2) The drawer may stipulate that it shall not be presented for acceptance. However, this condition may not be stipulated if the bill of exchange is payable by a person other than the drawee or at another place other than the domicile of the drawee or if the bill of exchange was payable after a specified date after sight.
- (3) The drawer may further stipulate that it shall not be presented for payment before a stated date.
- (4) Every endorser may stipulate that it be presented for acceptance on a specified date and may not specify a date, save when the drawer has stipulated that it must not be presented for payment.

Article 381

- (1) A bill of exchange which is due for payment on a certain specified date after sight shall be presented for acceptance within one year from its date.
- (2) The drawer and every endorser may reduce or extend this period.

Article 382

- (1) A drawee may require that the bill of exchange be presented a second time for acceptance on the day following the first presentment. An allegation by interested persons that such demand was rejected shall not be entertained in defence unless such demand is specifically mentioned in the protest.
- (2) The holder of a bill of exchange presented for acceptance shall not be bound to surrender and deliver it to the drawee.

Article 383

- (1) The acceptance shall be written on the bill of exchange indicated by the word "accepted" or any other expression conveying the same meaning and be signed by the drawee. The mere subscribing of the drawee's signature on the face of the bill of exchange shall be deemed as an acceptance.
- (2) Where the bill of exchange is due for payment after a certain specified period from sight or must be presented for acceptance according to a specific condition within a specified time limit the date of acceptance shall be stated on the same day of acceptance unless the holder requires that the date of acceptance should be shown on the day that the instrument was presented. When the date of acceptance is not stated the holder may in order to safeguard his rights of recourse against the endorsers and the drawer prove such lack of dating by a protest in due course.

Article 384

- (1) The acceptance shall be unconditional. However, the drawee may restrict his acceptance to part of the value of the bill of exchange.
- (2) When the form of acceptance contains a change in any of the other particulars of the instrument, it shall be deemed to be a refusal of acceptance. Nevertheless, the acceptor remains bound by the terms of his acceptance.

Article 385

- (1) Where the drawee stipulates on the bill of exchange a place for payment other than the drawee's domicile without naming the person to whom payment should be made, the drawee who signifies his acceptance may specify the place of payment. When he fails to do so the acceptor drawee shall be deemed to be bound to pay in the stipulated place of payment.
- (2) When the bill of exchange is due for payment at the drawee's domicile, he may stipulate in the form of acceptance an address of the place where payment shall be effected.

Article 386

- (1) The drawee who accepts the bill of exchange shall be liable for payment of the value thereof on the date of maturity.
- (2) Where payment is not made, the holder, even though he is the drawer, may commence direct legal action arising from the bill of exchange against the drawee/acceptor claiming recovery of all amounts which are recoverable under Articles 415 and 416 hereof.



Article 387

- (1) When the drawee strikes out the acceptance he has expressed on the bill of exchange before returning it, such deletion shall be deemed as non-acceptance. Unless the contrary is proved, the deletion shall be deemed to have taken place before returning the bill of exchange.
- (2) However, the drawee who serves written notice on the holder or any other signatory of his acceptance shall be bound by such acceptance towards them.

Section Five: Standby Guarantee:

Article 388

- (1) Payment of a bill of exchange may be guaranteed in whole or in part by a standby guarantor.
- (2) The guarantee shall be given by any person even though he is one of the persons signatories to the bill of exchange.

Article 389

- (1) The standby guarantee shall be indicated on the bill of exchange itself or on an attached piece of paper.
- (2) This guarantee shall be indicated by the words "Accepted as a Standby Guarantor" or any other words to this effect and signed by the guarantor.
- (3) Such guarantee shall be acquired from the signature by the guarantor on the face of the bill of exchange, unless such signature is subscribed by the drawee or the drawer.
- (4) There shall be mentioned in the guarantee the name of the guaranteed person, otherwise the guarantee shall be deemed to have taken place in favour of the drawer.

Article 390

- (1) A standby guarantor shall be bound in the same manner whereby the guaranteed person is bound.
- (2) The obligation of the standby guarantor shall be valid even though the obligation under which he is bound is invalid for any other reason than a deficiency in terms of formalities.

- (3) If a standby guarantor pays the amount of the bill of exchange , the rights arising therefrom towards the guaranteed person and towards every obligor under the bill of exchange against the said guaranteed person shall pass to the standby guarantor.

Article 391

- (1) The standby guarantee may be given on a separate piece of paper showing the place where it has taken place.
- (2) The standby guarantor who has given the guarantee on a separate piece of paper shall only be under obligation towards the person to whom the guarantee has been given.

Section Six: Maturity :

Article 392

- (1) A bill of exchange may be made payable in any of the following forms:
  - (a) at sight.
  - (b) following a certain specified period after sight.
  - (c) after the elapse of a certain specified period from the date of making the bill of exchange.
  - (d) on a certain specified date.
- (2) A bill of exchange which stipulates other or successive dates of maturity shall be null and void.

Article 393

- (1) A bill of exchange which is due for payment at sight shall be paid on presentment and shall be presented for payment within one year of its date. The drawer may reduce or extend the said time limit, while the endorsers may reduce it only.
- (2) The drawer may stipulate that a bill of exchange due for payment at sight shall not be presented before the expiry of a certain specified term, in which case the time for presentment is calculated from the date on which the time limit begins to run.

Article 394

- (1) The date on which a bill of exchange payable at a fixed period after sight falls due begins to run from the date of acceptance or from the date of protesting.
- (2) When the bill of exchange is not protested, the undated acceptance shall be deemed towards the acceptor to have taken place on the last date stipulated for acceptance according to Article 381 hereof.

Article 395

- (1) Where a bill of exchange is payable one or more months after the date of making it or after sight, it shall fall due on the corresponding date of the month during which it must be paid. In the absence of a corresponding date in the month during which the bill must be paid, it shall fall due on the last day of such month.
- (2) Where a bill of exchange is drawn for payment after one and a half months or after several months and a half month from the date of making it or from the date of sight, the calculation shall be made in terms of complete months.
- (3) Where the maturity of a bill of exchange is stipulated as being the beginning, middle or end of the month, it shall mean the first, fifteenth or last day of such month.
- (4) The expression 'eight days' or 'fifteen days' does not mean one or two weeks respectively, but shall actually be eight or fifteen days.
- (5) The expression 'half a month' shall mean fifteen days.

Article 396

- (1) Where a bill of exchange is due for payment on a certain specified date in a place where the calendar is different from that of the place of issue, the date of maturity shall be determined according to the calendar of the place where payment is to be made.
- (2) Where a bill of exchange is drawn between two places having different calendars and is made payable after a certain period of time of its date, the date of issue shall be adjusted to the corresponding day of the calendar of the place of payment and the date of maturity shall be determined accordingly.
- (3) The date of presentment of the bill of exchange shall be determined according to the foregoing Paragraph.

- (4) the foregoing rules shall not apply when it appears from a stipulation in, or the particulars of, the bill of exchange that different provisions should be applied.

Section Seven: Payment :

Article 397

- (1) The holder of a bill of exchange due for payment on a certain date and after a certain period from the date of making it or from the date of sight , shall present it for payment on the date of maturity.
- (2) Presentment of a bill of exchange to any of the legally recognised clearing houses shall be tantamount to presentment for payment.

Article 398

- (1) When a drawee pays off the bill of exchange, he may require the holder to surrender it with a discharge thereon duly signed.
- (2) The holder may not refuse partial payment.
- (3) In case of partial payment, the drawee may require such payment to be entered on the bill itself and a receipt for the sum be issued.
- (4) The drawer,endorsers and other obligors under a bill of exchange shall be discharged of liability to the extent of the amount actually paid from the original value thereof. The holder shall make a protest in respect of the remaining unpaid amount.

Article 399

- (1) A holder of a bill of exchange shall not be obliged to receive its value prior to maturity.
- (2) Where the drawee pays the value of a bill of exchange prematurely, he shall bear the relevant consequences.
- (3) A person who pays a bill of exchange without a valid objection is discharged of liability thereon, unless he has committed an act of fraud or gross error. He shall satisfy himself of the regularity of the sequence of endorsements but is not bound to verify the authenticity of the signatures of the endorsers.

Article 400

- (1) Where the bill of exchange stipulates payment in a currency not in circulation in Bahrain, it shall be paid in the currency in circulation therein according to the rate of exchange prevailing on the date of maturity. If payment is not made on the date of maturity, the holder shall have the option to claim the amount of the bill converted into the currency circulated in Bahrain, calculated at the rate of exchange prevailing on the date of maturity or on that of payment.
- (2) For the conversion of foreign currencies, there shall be followed the rate of exchange fixed by the Bahrain Monetary Agency or the prevailing market rate if it is not fixed by the BMA. Nevertheless, the drawer may indicate on the bill of exchange the rate of exchange to be adopted when calculating the amount payable.
- (3) Where the amount of the bill of exchange is determined in a domination of a currency commonly prevailing in a number of countries but the value thereof differs in the country of issue from that of the country of payment, it will be taken to mean the currency of the country of payment.

Article 401

- (1) If the bill of exchange is not presented for payment on the date of maturity, every debtor thereunder may deposit the amount thereof with the Court Treasury and the deposit shall be for the account of the holder and at his risk.
- (2) The Court Clerks Department shall deliver to the depositor a document evidencing the deposit of the amount, value thereof, date of the bill of exchange, date of maturity and the name of the person in whose favour it was originally made.
- (3) Where the holder demands the debtor to make payment, the debtor shall deliver the deposit document in consideration of taking receipt of the bill of exchange with an indication thereupon of the occurrence of payment by virtue of the deposit document that he has received bearing the signature of the holder. The holder shall receive the amount from the Court Clerks Department according to this document. If the debtor fails to surrender the deposit document to the holder, he shall pay the value of the bill of the exchange thereto.

Article 402

The payment of a bill of exchange may not be opposed except when it is lost, or the holder is adjudged bankrupt.

Article 403

Where a non-accepted bill of exchange which is drawn in a set is lost, the person entitled to its value may claim payment on the strength of one of its other parts.

Article 404

In case of loss of the part bearing the acceptance of a bill of exchange drawn in a set, payment of the value thereof may not be claimed pursuant to any of its other parts save according to an order of the President of the High Civil Court or one of the Puisne Justices designated for this purpose, provided that he shall prove the ownership thereof and provide a guarantee.

Article 405

A person who has lost an accepted or unaccepted bill of exchange but has not been able to produce one of the other copies thereof, may seek the issue of an order from the President of the High Civil Court or a Puisne Justice designated for this purpose for payment thereof provided that he shall prove the ownership thereof and provide a guarantee.

Article 406

- (1) In case of refusal to pay the value of a lost bill of exchange after claiming payment in conformity with the preceding two Articles, the owner shall, in order to safeguard his rights, prove the refusal to pay by making a protest document on the day following the date of maturity and shall serve it upon the drawer and endorsers in the manner and on the dates specified in Article 412.
- (2) The making and service of the protest is essential within the time limit specified in the preceding paragraph even though it is not feasible to seek the issue of an order of the President of the Court or the Puisne Justice designated for this purpose by the said Court President at the appropriate time.

Article 407

- (1) The owner of a lost bill of exchange may obtain a copy thereof by referring to his preceding endorser, who shall be bound to assist him and allow him to use his name in referring the previous endorser and so on up to the drawer.
- (2) Every endorser shall write his endorsement on the copy of the bill of exchange delivered by the drawer after noting that it is a replacement instead of the lost one.

- (3) Claiming payment on the strength of such copy may only be made pursuant to an order of the President of the High Civil Court or the Puisne Justice designated for this purpose, provided that a guarantee shall be provided.
- (4) All expenses shall be borne by the owner of the lost bill of exchange.

Article 408

Payment on the date of maturity pursuant to an order from the President of the High Civil Court or a Puisne Justice designated for this purpose in the events referred to in the preceding Articles shall discharge the debtor of liability.

Article 409

The liability of the person who presents the bill of exchange provided for in Article 404, 405 and 406 shall lapse after three years if no claim or demand has been filed.

Section Eight: Recourse:

Article 410

- (1) A holder of the bill of exchange shall have the right upon payment of the amount thereof on the maturity date to have recourse against the endorsers, the drawer and other obligors thereof.
- (2) The holder of a bill of exchange may have recourse before the date of maturity in the following events:
  - (a) total or partial non-acceptance.
  - (b) when the drawee is adjudged bankrupt whether he has accepted the bill or not, or when he ceases to make payment even when the cessation is not proved by a judgement or placing an attachment on his properties.
  - (c) declaring the bankruptcy of the drawer of the bill of exchange.

Where recourse is exercised against the guarantors according to Paragraphs (b and c) above, they may within three days from the date of the recourse file an application with the President of the High Civil Court or one of the Puisne Justices of the Court designated for this purpose for being granted a grace period to make payment. Where the Court President considers the application justifiable he shall determine in his order the period of grace. Such order may not be contested.

Article 411

- (1) Refusal of acceptance or payment of the bill of exchange shall be proved by protest for non-acceptance or protest for non-payment.
- (2) A non-acceptance protest shall be made within the time limits set down for presentment of the bill of exchange for acceptance. When the first presentment for acceptance in accordance with Article 381 (1) falls on the last day of the said time limit, the protest may be made on the following day.
- (3) The protest for non-payment of the bill of exchange payable on a certain date or after a certain period from the date of making it or from the date of sight on one of the two business days following the date of maturity. If the bill of exchange is payable at sight, the protest for non-payment shall be made according to the terms and conditions set forth in the preceding Article with respect to protest for non-acceptance.
- (4) The non-acceptance protest shall replace the need for presentment of the bill of exchange for payment and for making the non-payment protest.
- (5) Where the drawee suspends payment whether he has accepted the bill of exchange or not and where an unsuccessful attachment is placed on his properties, the holder of the bill of exchange may not have recourse against the guarantors until he has presented the bill of exchange to the drawee for payment and after he has made a non-payment protest.
- (6) Where the drawee is adjudged bankrupt, whether he has accepted the bill of exchange or not and where the drawer of a bill of exchange stipulating non-presentment for acceptance is adjudged bankrupt, presentment of the bankruptcy judgement per se shall be sufficient ground for the holder to exercise his rights of recourse against the guarantors.

Article 412

- (1) The holder of a bill of exchange shall notify his endorser and its drawer of the non-acceptance or non-payment within the following four business days after the protest or the date of presentment for acceptance or payment if it includes the condition of recourse without cost. Each endorser shall, within the two business days following the receipt of the notice, notify his endorser that he has received such notice, indicating thereto the names and addresses of the previous notifiers and so on from one endorser to another up to the drawer.

The time limit for each endorser shall run from the date of his receipt of the notice.



- (2) Where a signatory of the bill of exchange is served with a notice as aforesaid, such notice shall also be served to his standby guarantor within the said time limit.
- (3) Where any of the signatories of the bill of exchange failed to state his address or wrote it illegibly, notice shall be sufficient when made on his preceding endorser.
- (4) A party who is required to serve such notice shall do so in any manner, even by returning the bill itself.
- (5) He shall prove that service of the notice was made within the prescribed time limit. The said time limit is deemed to be observed when the notice is sent during the said period.
- (6) A party who is required to send notice shall not forfeit his rights if he fails to do so within the aforesaid time limit but shall where necessary pay for the damages resulting from his negligence, providing the amount of such damages does not exceed the amount of the bill of exchange.

#### Article 413

- (1) The drawer, acceptor, endorser and standby guarantor party to a bill of exchange may exempt the holder of the bill of exchange from making a non-acceptance protest or non-payment protest upon exercising his right to recourse, if he has written on the bill of exchange under his signature the condition of "recourse without costs" or without protest or any other expression to this meaning.
- (2) This condition shall not exempt the holder from presenting the bill of exchange within the prescribed dates nor from making the necessary notices, and any person who invokes towards the holder the non-compliance with these time limits shall prove it.
- (3) Where the drawer writes this condition its effects shall be applicable to all the signatories. However, if the condition is made by an endorser or a standby guarantor, its effects shall be solely applicable thereto.
- (4) Where the drawer has made the condition and where the holder has made the protest in spite of this, he shall be solely liable for payment of the costs. Meanwhile, if the condition is made by an endorser or standby guarantor recourse may be made against all the signatories with respect to the costs of protest if made.

Article 414

- (1) The drawer, acceptor, endorser and standby guarantor of a bill of exchange are jointly liable to the holder who may claim from them separately or jointly without regard for any order.
- (2) A signatory of the bill of exchange or a person who has paid its value may exercise this right against those liable to him.
- (3) An action brought against any of the parties liable shall not bar action against the others, even when their liability was subsequent to the party who is sued in the first instance.

Article 415

- (1) The holder of a bill of exchange may claim the following from any person against whom he has a right of recourse:
  - (a) the principal sum of a non-accepted or non-paid bill of exchange, plus interest, where there is a stipulation to that effect.
  - (b) interest calculated at the legal rate from the date of maturity.
  - (c) protest costs and notice costs as well as such other costs.
- (2) Where recourse is made before the maturity date of the bill of exchange a sum of its value is deductible equivalent to the rate of official discount on the date of recourse at the place wherein lies the holder's domicile.

Article 416

A person who has paid the value of a bill of exchange may claim from his guarantors:

- (1) the entire amount he has paid.
- (2) interest on the sum paid calculated from the date of payment at the legal rate.
- (3) expenses incurred by him.

Article 417

- (1) A liable party who by way of recourse is called upon or is likely to be called upon to pay a bill of exchange may if he pays the sum thereof, demand that the bill, together with the protest and a receipt for the amount paid, be surrendered to him.

- (2) An endorser who pays the bill of exchange may delete his endorsement and the subsequent endorsements.

#### Article 418

Where recourse is made after a partial acceptance, the person who pays the unaccepted part of the amount of the bill of exchange may require the holder thereof to make an entry to that effect on the bill of exchange and to deliver to him a receipt. Furthermore, the holder shall deliver to him a certified true copy of the original bill of exchange and the protest to enable him to exercise his right of recourse against others for the amount paid by him.

#### Article 419

- (1) Upon the expiry of the time limits set for performing the following acts, the holder of a bill of exchange shall forfeit his rights that arise from the bill with regard to the endorsers, drawer and other obligors, other than the acceptor:
  - (a) presentment of the bill of exchange due for payment on sight or after a period from sight.
  - (b) making the non-acceptance or non-payment protest.
  - (c) presentment of the bill of exchange for payment in case of providing for recourse without costs.
- (2) The drawer shall not benefit from such forfeiture of his rights unless he proves that he had a consideration for payment on the maturity date, in which case the only recourse open to the holder shall be against the drawee.
- (3) When the bill of exchange is not presented for acceptance on the date stipulated by the drawer, the holder shall forfeit his right of recourse on the ground of non-acceptance and non-payment, unless it is established from the condition indicated that the drawer only had the intention of relieving himself of accommodating acceptance.
- (4) Where the endorser stipulates in his endorsement a date for presentment of the bill for acceptance, he shall be the sole beneficiary of such stipulation.

#### Article 420

- (1) Where due to a force majeure a bill of exchange is not presented or protested within the prescribed time limits, they shall be extended.

- (2) The holder of a bill of exchange shall promptly serve notice on his endorser of the force majeure. Such notice dated and signed by him shall be written on the bill of exchange or on the attached piece of paper and shall be served by each endorser to his preceding endorser up to the drawer according to Article 422.
- (3) Upon the cessation of the force majeure the holder of the bill of exchange shall promptly present it for acceptance or payment and when necessary protest it.
- (4) Where the force majeure continues for more than thirty days calculated from the date of maturity, recourse may be made against the obligors without the need for presentment of or protesting the bill.
- (5) When the bill of exchange falls due on sight or at a time after sight, the thirty day time limit begins to run from the date on which the holder serves notice of the force majeure on his endorser, even when the said date falls before the expiry of the time limits set for presentment of the bill of exchange. The sight period shall be added to the thirty day time limit when the bill matures for payment after a certain period from sight.
- (6) Matters related to the person of the holder of the bill of exchange or to any person delegated to present the bill of exchange shall not be deemed as a force majeure.

#### Article 421

The holder of a bill of exchange which is subject to a non-payment protest may seek the placement of a precautionary attachment without the need for providing a surety on the properties of the drawer, acceptor, endorser or standby guarantor or such other obligors under the bill of exchange subject to compliance with the provisions laid down in the Civil and Commercial Procedures Act, as amended.

#### Article 422

- (1) Unless otherwise provided, any person having a right of recourse against other obligors under the bill of exchange shall recover his dues by drawing a fresh bill of exchange on one of his accommodating parties which shall fall due for payment on sight at the domicile of such accommodating party.
- (2) The sum of a recourse bill of exchange shall cover the amounts mentioned in Articles 415 and 416 in addition to any commissions and the legally prescribed fees.

- (3) When the drawer of a recourse bill of exchange is himself the holder, its amount shall be determined on the same basis as that adopted in fixing the value of the sight bill of exchange drawn from the place where the original bill of exchange was payable at the place where the accommodation party is situated.
- (4) Where the drawer of a recourse bill of exchange is an endorser, its amount shall be determined on the same basis as that used in fixing the value of a sight bill of exchange drawn from the place wherein is situated the drawer's domicile on the place wherein is situated the domicile of the accommodation party.
- (5) In case of plurality of a recourse bill of exchange, the drawer or any endorser of the original bill may not be required to pay more than the price of one bill of recourse only.

Section Nine : Intervention :

General Provisions

Article 423

First: General Provisions:

Article 423

- (1) The drawer, endorser and accommodation party of a bill of exchange, may name a person to intervene, accept or pay the bill, when necessary.
- (2) A bill of exchange may be accepted or paid by a person who intervenes for the benefit of any party liable thereunder who may be the subject of recourse.
- (3) Intervention may take place by a third party, the drawee who refused acceptance of the bill of exchange or any party liable thereunder, but it may not be by a drawee who has accepted the bill.
- (4) The party who intervenes shall within the following two business days after the intervention notify the person for whose benefit he has intervened, otherwise he shall be held liable for damages, if necessary, for the consequences of his negligence, provided that the amount of the damages shall not exceed the amount of the bill of exchange.

Second: Acceptance by Intervention:

Article 424

- (1) Acceptance by intervention shall take place in all cases where the holder of an acceptable bill of exchange has a right of recourse prior to the date of maturity.
- (2) Where the bill of exchange names an acceptor or payer where necessary of the value thereof at the place of its payment, the holder may not, prior to maturity, have recourse either against the party who has made the nomination nor his subsequent signatories, unless he has presented the bill to the acceptor or payer where necessary named therein, who has refused acceptance, which refusal shall be established by a protest.
- (3) The holder may in other cases refuse to accept the intervention but when he accepts to intervene, he shall forfeit his right of recourse prior to the maturity date against the person for whose benefit he has intervened and his subsequent signatories.

Article 425

Acceptance by intervention shall be written on the bill of exchange itself, and be signed by the intervener and the name of the party for whose benefit the intervention is made shall also be stated thereon.

Where these particulars are not mentioned on the bill, the intervention is deemed to have been made in favour of the drawer.

Article 426

- (1) The acceptor of intervention shall have the same liability to the holder and the subsequent endorsers of the person for whose benefit the intervention is made as that of the latter.
- (2) the party for whose benefit the intervention is made and his accommodation parties may in spite of the acceptance of the intervention require the holder in consideration of payment of the amount stated in Article 415 to surrender the bill, the protest and the receipt.

Third: Payment by Intervention:

Article 427

- (1) The bill of exchange may be paid by intervention in all cases where the holder is entitled on or before the date of maturity to recourse against those liable thereunder.

- (2) Such payment shall be effected by settlement of the entire amount payable by the party for whose benefit the intervention is made.
- (3) Payment shall be effected no later than the day which follows the last day on which non-payment may be protested.

Article 428

- (1) When the acceptors for honour or those named to pay the bill of exchange, when necessary, have a domicile at the place of payment, the holder shall present it to all of them for payment and, if necessary, protest non-payment not later than the day next following the last day of the time limit for protest.
- (2) Failure to protest within the prescribed time limit shall discharge the liability of the party who named the payer in case of necessity or the person for whose benefit the bill was accepted and the subsequent endorsers.

Article 429

Where the holder of a bill of exchange refuses to receive the payment by intervention, he shall forfeit his right of recourse against any party who would have been discharged by such payment.

Article 430

- (1) Payment by intervention shall be established by writing a disclaimer on the bill of exchange stating the name of the party for whose benefit the payment is made. Where the name is not stated in the disclaimer the payment by intervention shall be deemed to have been made for the benefit of the drawer.
- (2) The bill of exchange and the protest, if made, shall be delivered to the party who paid by intervention.

Article 431

- (1) Where a bill of exchange has been paid by intervention, the payer by intervention is subrogated for and acquires all rights arising therefrom to the party for whose benefit he is making the payment and all parties liable to that party pursuant to the bill of exchange. However, the said payer by intervention may not re-endorse the bill.
- (2) The subsequent endorsers to the party for whose benefit payment is made shall be discharged of liability.

- (3) Where several people offer to pay the bill of exchange by intervention, the person whose payment will discharge the highest number of those liable under the bill shall have preference. Where this rule is knowingly violated, the payer by intervention forfeits his right of recourse against the parties who would have been discharged had this rule been observed.

Section Ten: Several Copies:

Article 432

- (1) A bill of exchange may be drawn in a set of several identical copies.
- (2) Each part of the set shall be numbered and ,failing which, each part shall be deemed to be a separate bill.
- (3) Every holder of a bill of exchange which does not stipulate that it is the only copy may ask for copies thereof at his expense. In order to obtain such copies he shall refer to his endorser who shall assist him to refer to the previous endorser and so on up to the drawer.
- (4) Every such endorser shall enter his endorsement on the new copies.

Article 433

- (1) Payment of a bill of exchange on the strength of any of its parts constitutes a discharge of liability, even when this is not stipulated therein. Such payment shall nullify the effect of the other parts. However, the drawee shall remain liable to pay the amount of any part accepted by him but he failed to recover.

Article 434

A person who sends any of the parts of a bill of exchange for acceptance shall show on the other parts the name of the person who has possession of such part. This latter shall surrender it to the lawful holder of any other part.

If he refuses to surrender it , the holder shall have no right of recourse unless he proves by a protest that:

- (a) the part sent to him for acceptance was not surrendered to him in spite of the fact that he requested surrender;
- (b) acceptance or payment was not on the strength of another part.



Section Eleven: Copies :

Copies:

Article 435

- (1) The holder of a bill of exchange may make copies thereof.
- (2) Each copy shall be identical to the original including the endorsements and any other particulars recorded thereon. He shall write thereon 'the transcription from the original ends here'.
- (3) The copy may be endorsed and have an accommodation party in the same manner as on the original. The copy shall have the same effects as the original.

Article 436

- (1) The name of the holder of the original bill of exchange shall be stated on the copy. The holder shall surrender the original to the lawful holder of the copy.
- (2) Where the holder of the original refuses to surrender it, the holder of the copy shall not have the right of recourse against the endorsers or the standby guarantors thereof, unless he proves by protest that the original had not been surrendered to him on request.
- (3) When after the last endorsement but before making the copy a note is written on the original stating 'as of now endorsement shall be made on the copy only', any endorsement made thereafter on the original shall be null and void.

Section Twelve: Alteration :

Alteration

Article 437

If an alteration is made to the text of the bill of exchange, the parties who sign after such alteration shall be liable according to the altered text. However, the parties who signed prior to the said alteration shall be liable on the initial text.

Section Thirteen: Prescription:

Article 438

- (1) No legal action shall be heard which arises from the bill of exchange against the acceptor after three years from the date of maturity.

- (2) No legal action by the holder against the endorsers or the drawer shall be heard after one year from the date of protest within the prescribed time limit or from the date of maturity where the bill contains a stipulation 'recourse without costs' or 'recourse without protest'.
- (3) When an endorser brings an action against another endorser or the drawer, the action shall not be heard after six months from the date on which the endorser paid the bill of exchange or from the date on which action is brought against him

#### Article 439

- (1) Where a case is filed, the time limits set forth in the preceding Article shall not apply except from the date of the last action taken on the case.
- (2) The said time limits shall not apply when the debt is confirmed by a judgement or when the debtor admits liability on a separate document which entails renewal of the debt.

#### Article 440

The interruption of the said time limits shall not have effect except towards the person against whom the interruption action is taken.

#### Article 441

The defendants in an action claiming a debt shall, when required to do so, establish under oath the discharge of their liability, in spite of the expiry of the time limits. Their heirs or their successors shall give evidence under oath that they were not aware that their legator died when he was liable for the debt.

### CHAPTER TWO

#### PROMISSORY NOTES

#### Article 442

A promissory note shall contain the following particulars:

- (1) A stipulation of order or the expression 'promissory note' written in the text of the note in the language in which it is made.
- (2) Unconditional undertaking to pay a certain sum of money.
- (3) Date of maturity.

- (4) Place of payment.
- (5) name of the party to whom payment shall be made or to his order.
- (6) Date and place of making the promissory note.
- (7) Signature of the maker of the note.

#### Article 443

A note which does not contain any of the particulars set down in the preceding Article shall not be deemed to be a promissory note except in the following cases:

- (1) when the maturity date is not stated in the note, it shall be deemed to be payable at sight.
- (2) when the place of payment or domicile of the maker is not stated in the note, the place of making it shall be deemed as the place of payment and domicile of its maker.
- (3) when the place of making is not stated in the note, it shall be deemed to have been made at the place shown next to the issuer's name.

#### Article 444

- (1) A promissory note shall be subject to the stipulations pertaining to a bill of exchange regarding legal qualifications, endorsement, maturity, payment, recourse on ground of non-payment, inadmissibility of granting a grace period for payment, precautionary attachment, protest, calculation of time limits, business days, recourse by making a bill of exchange, payment by intervention, copies, alteration and prescription in as far as they are not inconsistent with the nature thereof.
- (2) A promissory note shall also be subject to the stipulations pertaining to a bill of exchange which is due for payment at the domicile of a third party or at a place other than that where the domicile of the drawee is located, the stipulation for interest, the discrepancies in the particulars of the sum payable, the effects of signature in the events set forth in Article 356 or the signature of an unauthorised person or one acting ultra vires.
- (3) A promissory note shall be subject to the provisions relevant to the standby guarantee (Articles from 388 to 391), subject always to ensuring that where the name of the guaranteed party is not mentioned in the promissory note the guarantee shall be deemed to have been made for the benefit of the issuer of the promissory note.

Article 445

- (1) The issuer of a promissory note shall be liable in the same way as the acceptor of a bill of exchange.
- (2) A promissory note which becomes payable after a certain specified period from sight shall be presented to the issuer within the time limit stipulated in Article 381 for making an entry that it has been sighted. Such entry shall be dated and signed by the issuer.
- (3) the period of sight shall commence from the date of the aforesaid entry.
- (4) When the issuer refuses to make the said entry, such refusal shall be established by a protest. The after sight period shall begin to run from the date of the protest.

CHAPTER THREE

CHEQUES

Article 446

In addition to the provisions of this Chapter, the stipulations pertaining to bill of exchange shall be applicable to cheques in as far as they are not inconsistent with the nature thereof.

Article 447

A cheque shall contain the following particulars:

- (1) the word 'cheque' written in the text of the instrument in the language in which it is written.
- (2) an unconditional order to pay a certain sum of money.
- (3) the name of the person who should pay, the drawee.
- (4) place of payment.
- (5) the date and place of making the cheque.
- (6) signature of the maker (drawer) of the cheque.
- (7) the name of the person to whom or to whose order payment shall be made in accordance with Articles 452 and 453.

Article 448

An instrument which does not contain one of the particulars set down in the preceding Article shall not be considered as a cheque except in the following cases:

- (1) when the place of payment is not stated, the cheque shall be deemed due for payment at the place shown next to the drawee's name . When several places are mentioned next to the drawee's name, the cheque shall be deemed to be payable at the place first stated. When these or any other particulars are not stated on the cheque, it shall be deemed as payable at the place wherein is located the head office of the drawee.
- (2) When the place of making the cheque is not stated therein, the cheque shall be deemed to have been made at the place shown next to the drawer's name.

Article 449

Cheques issued and payable in Bahrain may be drawn only on a bank. Instruments drawn as cheques on other than a bank shall not be deemed as valid cheques.

Article 450

- (1) A cheque may not be issued unless the drawer has , at the time of drawing the cheque with the drawee, money which he can dispose of by cheque pursuant to an express or implied agreement.
- (2) The drawer of a cheque or person ordering another to draw a cheque on his behalf shall deliver sufficient funds to pay such cheque. However, a party who draws on behalf of another shall be held personally liable to the endorsers and holders but no other for providing the funds for payment.
- (3) In case of denial, the drawer alone shall prove that the drawee of the cheque had at the time of its making enough funds to pay it, failing which he shall secure the payment of the cheque in spite of making a protest after the legally prescribed time limits.

Article 451

- (1) A cheque is not subject to acceptance. An acceptance written on the cheque shall be deemed null and void.

- (2) However, the drawee may acknowledge the cheque. Such acknowledgement shall confirm the availability of a consideration with the drawee on the date of such confirmation. The drawee's signature on the face of the cheque shall be regarded as an acknowledgement thereof .
- (3) A drawee may not refuse to acknowledge the cheque if so requested by the drawer or the holder and if he has a consideration for payment sufficient to make payment of the value of the cheque.
- (4) An acknowledged consideration of payment of the cheque shall remain frozen with the drawee and at his risk in favour of the holder until the expiry of the date for presenting the cheque for payment.

#### Article 452

- (1) A cheque may be made payable to:
  - (a) a named person with an express provision 'to order' or without it.
  - (b) a named person with the stipulation 'not to order' or any other expression to this effect.
  - (c) the bearer of the cheque.
- (2) A cheque drawn to a named person with the stipulation 'or to bearer' or any other expression to the same effect shall be construed to be a cheque 'to bearer'. Where the name of the beneficiary is not stated the cheque shall be deemed 'to bearer'.
- (3) A cheque payable in the State of Bahrain and containing the condition 'non-negotiable' shall not be paid unless it is subject to this condition.

#### Article 453

- (1) A cheque may be drawn to the drawer's order.
- (2) A cheque may also be drawn for the account of another.
- (3) The drawer may not draw a cheque on himself except when drawn by one establishment or another firm both of which belong to the drawer himself, provided that the cheque is not payable 'to bearer'.

Article 454

A stipulation of interest in the cheque for payment of interest is null and void.

Article 455

It may be agreed that a cheque shall be paid in another bank in the place wherein the drawee bank's domicile is situated or at any other place.

Article 456

The drawer shall secure the payment of the cheque. Any stipulation exonerating the drawer from such liability shall be null and void.

Article 457

- (1) A cheque made payable to a named person shall, regardless of whether it is expressly made to order or not, be negotiable by endorsement.
- (2) A cheque made payable to a named person may not be negotiated if marked 'not to order' or any other similar term, but shall be governed by the provisions relating to the assignment of a right with the subsequent effects of such assignment.
- (3) An endorsement may be made to the drawer or to any other obligor. The latter may re-endorse the cheque.
- (4) A cheque payable to the holder shall be negotiated by delivery.

Article 458

An endorsement to the drawee shall be tantamount to a discharge of liability, unless the drawee owns several firms and the endorsement has been made in favour of an establishment other than that on which the cheque has been drawn.

Article 459

- (1) Save where otherwise provided, an endorser shall be liable for payment of the cheque.
- (2) The endorser may ban the re-endorsement of a cheque in which case he shall not be liable towards the holders of the cheque by subsequent endorsements.

Article 460

The possessor of an endorsable cheque is deemed as its lawful holder if he proves that he has title thereto by consecutive endorsements, even though the last endorsement was in blank. Crossed endorsements shall be deemed to be void in this regard. Where a blank endorsement is followed by another endorsement, the person who subscribes his signature to the latter endorsement shall be deemed to be the person to whom the right to the cheque has passed by virtue of the blank endorsement.

Article 461

Where a person loses possession of the cheque, whether it is to bearer or endorsable, the person to whom the said cheque has passed shall not be required to abandon possession thereof if he proves his right thereto in the manner set forth in the preceding Article, unless he has acquired possession thereof in bad faith or has committed a gross error in acquiring possession thereof.

Article 462

An endorsement made on a cheque to bearer renders the endorser liable in accordance with the provisions governing recourse. Such endorsement shall not result in making the instrument a cheque to order.

Article 463

- (1) An endorsement made after a protest or after the expiry of the time limit for presentment of the cheque shall produce only the effects of an assignment of a right.
- (2) An endorsement which is not dated is deemed to have been made before the protest or before the expiry of the time limit for presentment of the cheque, unless the contrary is established.
- (3) Endorsement may not be predated. Predating endorsements shall be deemed as a forgery.

Article 464

- (1) An accommodation party may guarantee the payment of the entire or part of the amount of the cheque.
- (2) The accommodation shall be from a third party other than the drawee and may also be by any of the signatories of the cheque.

Article 465

A cheque is payable on the date of its issue and any provision to the contrary shall be deemed null and void.



A cheque may not be presented for payment before the date stated thereon as the date of its issue.

Article 466

- (1) A cheque drawn in the State of Bahrain or abroad and due for payment therein shall be presented for payment within six months.
- (2) The time limit mentioned in the preceding paragraph shall commence from the date stated in the cheque as being the date of its issue.

Article 467

Where a cheque is drawn between two places using different calendars, the date of issue shall be adjusted to the corresponding date of the calendar used in the place of payment.

Article 468

Presentment of the cheque to a legally recognised clearing house shall be tantamount to presentment for payment.

Article 469

- (1) The drawee shall pay the value of the cheque even after the expiry of the time limit for presentment
- (2) Objection to payment of the cheque shall not be entertained except when it is lost or the holder is adjudged bankrupt.
- (3) Where in spite of the foregoing restriction the objection to payment of the cheque takes place on other grounds, the Court shall upon an application from the holder order the dismissal of the objection even where an action on the principal issue has been filed.

Article 470

Where the drawer dies, becomes legally disqualified or is declared bankrupt after the making of the cheque, the judgements passed as a consequence thereof shall not be affected.

Article 471

- (1) Where several cheques are presented simultaneously and the consideration is found to be insufficient for payment thereof, due regard shall be had to the dates of their issue.

- (2) Where all the cheques presented originate from the same cheque book and have the same date, the cheque bearing the first serial number shall have preference, unless the contrary is proved.

#### Article 472

- (1) Where it is stipulated that a cheque be paid in a certain country in other than its currency, its amount may be paid on the date of presentment in the currency circulated in Bahrain converted at the rate of exchange on the date of payment. Where payment is not made on the date of presentment, the holder may have the option of requiring payment of the amount of the cheque converted into the currency circulated in Bahrain at the rate prevailing on the date of presentment or on the date of payment.
- (2) When a cheque is presented for the first time after the expiry of the time limit for presentment, the rate of conversion shall be that prevailing on the expiry date of the time limit for presentment.
- (3) The rate fixed by the Bahrain Monetary Agency or the prevailing market rate where it is not fixed by the BMA shall be applicable in evaluating the foreign currency. However, the drawer shall determine in the cheque the rate on the basis of which the payable amount shall be calculated.
- (4) Where the amount of the cheque is stated in a currency having a common description but the value in the country of issue is different from that in the country of payment, it shall be presumed that the intention shall be the currency of the country of payment.

#### Article 473

The obligation of a surety provided in case of the loss of the cheque shall lapse after six months if no claim or legal action is filed during such period.

#### Article 474

- (1) The owner of a cheque to bearer which is lost or destroyed may lodge an objection with the drawee to payment of its value. He shall give the cheque number, amount, name of its drawer and every other particular enabling the identification thereof and the circumstances surrounding its loss or destruction.

If it is not feasible to provide some of these particulars, the reasons shall be stated.

If the objecting party has no domicile in the State of Bahrain, he shall define his elected domicile.

- (2) When the drawee receives the objection he shall refrain from payment of the amount of the cheque to the possessor thereof and set aside the payment of the cheque, pending the resolution of the matter.
- (3) The drawee shall, if so requested by the objecting party and at his expense, publish the number of the lost or destroyed cheque, its amount, name of drawer, name of the objecting party and his address in a daily newspaper. Every disposal of the cheque after the date of such publication shall be null and void.

#### Article 475

- (1) The person having possession of the cheque referred to in the preceding Article may dispute the objection with the drawee.

The drawee shall receive the cheque from him against a receipt, and then shall notify the objecting party by a registered letter with a delivery note of the name and address of the possessor of the cheque.

- (2) The possessor of the cheque shall notify the objecting party by a registered letter with a delivery note of the requirement to file a legal action claiming title to the cheque within thirty days of the date of receiving the notification. The said notification shall include the reasons for the possession of the cheque and date thereof.
- (3) If the objector fails to file a legal action claiming title within the time limit indicated in the preceding Paragraph, the Court may upon an application from the possessor of the cheque order the non-admission of the objection. In this case, the possessor of the cheque shall be deemed as its lawful owner towards the drawee.
- (4) If the objector files a legal action claiming title to the cheque, the drawee may not pay the value thereof except to the litigant submitting to him a final court judgement evidencing title to the cheque or an amicable settlement approved by the two parties endorsing the title to the cheque.

#### Article 476

- (1) Where the possessor of the cheque fails, within six months from the date of the objection provided for in Article 473, to claim payment of the amount of the cheque, the person who has objected may request the Court for a permission to encash the value of the cheque.

The Court shall pass a judgement against the drawee after ascertaining that the objector has title to the cheque.

- (2) If the objector fails to submit the request referred to in the foregoing paragraph or if he submits it and it has been rejected by the Court, the drawee shall recredit the consideration for payment to the drawer's account.

Article 477

- (1) The holder of a cheque may cross it. The crossing shall have the effects mentioned in the following Article.
- (2) Crossing shall be made by drawing two transverse parallel lines on the face of the cheque.
- (3) Crossing may be general or special.
- (4) Where no writing is made between the lines or the word "bank" or any other word to this effect is inserted therein, the crossing shall be general. Where the name of a specific bank is inserted within the lines, the crossing is special.
- (5) A general crossing may be converted into a special crossing, but a special crossing shall not be changed into a general crossing.
- (6) The cancellation of the crossing or the deletion of the name of the bank inserted therein shall be null and void.

Article 478

- (1) A drawee may not pay a cheque generally crossed except to one of his customers or to a bank.
- (2) A drawee may not pay a cheque specially crossed except to the bank whose name is inserted within the lines. However, the bank whose name is written within the lines may designate another bank to receive the value of the cheque.
- (3) A bank may not acquire a crossed cheque except from one of its customers or from another bank nor may it receive the value thereof on behalf of other than the foregoing parties.
- (4) Where the cheque is specially crossed to more than one party, the drawee may not pay it except when it has two crossings one of which is for collection through a clearing house.
- (5) Where the drawee fails to observe the foregoing stipulations, he shall be liable for payment of damages to the extent not exceeding the value of the cheque.
- (6) The word "customer" in this Article shall be every person having an account with the drawee and has obtained therefrom a cheque book or has the right to obtain such a book

Article 479 - Paragraph (1) substituted on 4th September 1993

- (1) The drawer or bearer of cheque may stipulate that it shall not be paid in cash by writing on the face thereof the following words "to be credited to the account" or any other words to this effect. In this case, a cheque shall not be negotiable by way of endorsement and the drawee shall only settle the amount of the cheque by means of book entries such as crediting the account, bank transfer or making a set-off. The said written entries shall be tantamount to payment.
- (2) Striking off the expression 'to be credited to the account' shall not be recognised.
- (3) Where the drawee fails to observe the preceding provisions, he shall be liable for payment of damages to an extent not exceeding the amount of the cheque.

Article 480

- (1) The holder of a cheque may have recourse against the drawee, endorser and other obligors when it is presented within the legally prescribed period and the amount thereof has not been paid, provided that he shall prove the refusal to make payment by making a protest.

As an alternative to making a protest, refusal to make payment shall be established by:

- (a) a statement to that effect from the drawee stating the date of presenting the cheque.
  - (b) a statement from the clearing house indicating that the cheque has been presented within the legally prescribed period but the value thereof has not been paid. The statement shall be dated and written on the cheque under the signature of the person who has made it.
- (2) The making of the statement mentioned in the preceding Article shall not be refused if so requested by the holder, even though the cheque carries the condition of recourse without costs. Meanwhile, the drawee may request a grace period not exceeding four days for presenting the cheque even if it is presented on the last day of the time limit for presentment.

Article 481

The holder of a cheque reserves the right to have recourse against the drawer even when the holder fails to present it for payment to the drawee, to make a protest or to carry out any alternative action within the time limit set, unless the drawer has provided the consideration for payment, and such consideration remains with the drawee until the expiry of the time limit for presenting the cheque, after which the consideration ceased to exist through an act not attributed to the drawer.

Article 482

Dishonouring a cheque shall be established in the manner provided for in the first Paragraph of Article 480 before the expiry of the presentment time limit. Where the presentment takes place on the last day of such time limit, dishonouring the cheque may be proved on the following business day.

Article 483

- (1) The time limits prescribed shall be extended where the cheque is not presented, protested or alternative action is not taken in respect thereof within the prescribed time limits, due to a force majeure.
- (2) The holder of a cheque shall promptly give notice to his endorser of the force majeure and enter such notice, dated and signed, on the cheque or the piece of paper attached thereto. Such notices shall be arranged in a serial order according to Article 412.
- (3) Upon the cessation of the force majeure the holder shall present the cheque for payment without delay and where relevant shall protest or take alternative action with regard to the cheque.
- (4) Where the force majeure continues for more than fifteen days calculated from the date on which the holder of the cheque gave notice to his endorser of the occurrence of the force majeure, even though such date falls immediately before the expiry of the time limit for the presentment of the cheque, recourse may be had against the obligors without the need for presenting the cheque, making a protest or taking an alternative action.
- (5) Matters relating to the person of the holder of the cheque or to the person whom the holder has appointed to present it, protest or take alternative action shall not be deemed as a force majeure.

Article 484

The drawee shall be solely responsible for the damage arising from payment of the cheque in which the drawer's signature has been forged or the particulars contained in the text thereof have been altered, where it is not possible to attribute such action to a fault of the drawer whose name appears on the face of the cheque. Every condition to the contrary shall be deemed as null and void. A drawer shall be particularly at fault if he fails to exercise in preserving the cheque book delivered thereto the care exercised by a normal person.

Article 485

- (1) Save for the cheque to bearer, a cheque may be drawn in identical copies if it is drawn in the State of Bahrain and is payable in a foreign country or vice versa.
- (2) Where several copies are made of a cheque, each copy shall be given a number on the face thereof, otherwise each copy shall be deemed as an independent cheque.

Article 486

- (1) Legal actions for recourse by a holder of a cheque against the drawee, drawer, endorsers and other obligors shall lapse after six months from the date of expiry of the time limit for presenting the cheque.
- (2) Legal actions of recourse by other obligors against each other shall lapse after six months from the date on which the obligor has made payment or from the date of filing a claim in court.
- (3) In spite of the elapse of the time limits set forth in this Article, the defendants shall under oath confirm their discharge of liability for the debt if they are asked to take the oath. Their heirs and other successors shall testify under oath that their testator died after becoming liable for the debt.

Article 487

- (1) The time limit provided for in the preceding Article shall not be applicable in case of filing legal action except from the date of the most recent verdict in respect thereof.
- (2) The aforesaid time limit shall not be applicable if a judgement has been passed confirming the debt or if it is admitted by the debtor by an independent instrument, so that such admission results in renewing the debt.

Article 488

The interruption of the prescription shall not have any effect except against the person towards whom the action interrupting the prescription has been taken.

Article 489

A holder of a cheque and other obligors liable to pay the amount thereof in spite of the lapse of the claim for the amount of the cheque, may demand the drawer who has not provided the consideration for payment or provided it and recovered all or the entire amount thereof to return what he has illegally enabled him to amass wealth.

Article 490

Every bank shall deliver to its customer a book containing blank cheques to be used for payment through its treasury, and to print on every cheque the name and account number of the person who has received it.

Drawing may be made by means of special written requisitions in the manner arranged by the bank or as is acceptable thereto in terms of formalities.

The signature shall be identical to the specimen signatures and approved signatures recorded with the bank.

The holder of the account shall be liable towards the bank whether such account is debited or credited.

Article 491

If the penal court passes a judgement of conviction in any of the cheque crimes set forth in the Penal Code, it shall be empowered to order the publication of a summary of the judgement at the expense of the convicted party in one of the local newspapers.

Such publication shall include the name of the convicted party, his domicile, occupation and the punishment inflicted against him.

In case of recurrence, the publication provided for in the preceding Paragraph shall be mandatory.

CHAPTER FOUR

MORTGAGE OF SECURITIES AND OTHER COMMERCIAL PAPERS

Article 492

The mortgage of securities and other commercial instruments shall be subject to the rules governing commercial mortgage, provided always that the following provisions shall be complied with.

Article 493

If the mortgage is in possession of the mortgaged instruments on another ground previous to the mortgage, he shall be deemed to be in possession thereof in his capacity as a mortgagee upon the creation of the mortgage.

Article 494

If the mortgaged instruments are provided by a person other than the debtor, the owner thereof shall not be obliged to pay the debt secured by the mortgage except in his capacity as a surety.



Article 495

The lien enjoyed by the creditor shall exist with its priority between the contracting parties and towards third parties in respect of the dividends due for the mortgaged securities ,interest thereof and the papers replacing them and the value thereof if it was paid before the date of maturity.

CHAPTER FIVE

GENERAL PROVISIONS

Article 496

A non-acceptance protest or non-payment protest shall be made in accordance with the provisions of the Civil and Commercial Procedures Act, as amended, with respect to the service of the court summonses, at the domicile of the party liable for payment of the value of the commercial paper or at the last known domicile thereof, and also at the domicile of the person who has presented the commercial paper for payment ,if necessary, or at the domicile of the party who has accepted it by intervention

Article 497

- (1) In addition to the details required to be included in the court summonses, the protest shall include a true and original copy of the commercial paper containing all details regarding the acceptance, endorsement, guaranteeing , payment of the value thereof if necessary and such other particulars. The protest shall include the advice for payment of the value of the commercial paper, establishing the presence or absence of the person who has to accept or pay it, grounds for the refusal to accept or pay it, failure or refusal to subscribe the signature and the amount paid of the value of the paper in the event of partial payment.
- (2) A confirmation made by the person who has made the protest against him shall not be recognised as evidence against him unless he has signed the confirmation.

Article 498

No other paper shall replace the protest except in the cases provide for by the law.

Article 499

- (1) The officer in charge of making the protest shall leave a copy thereof for the person against whom it has been made.

- (2) The department to which the officer belongs shall record the protest papers in full on a daily basis, subject to complying with the chronological order thereof in a special register which shall be regulated by an order of the Minister for Justice and Islamic Affairs.
- (3) The said department shall also within the first ten days of every month forward to the Commercial Registry a list of the non-acceptance protests made during the previous month for the accepted bills of exchange, promissory notes and cheques.
- (4) This list shall include the following particulars:
  - (a) Date of protest.
  - (b) Name of the maker of the instrument or acceptor of the bill of exchange, his surname, occupation, domicile, drawee bank and the person who has crossed the cheque to his order.
  - (c) Date of maturity.
  - (d) Amount of the bill of exchange, promissory note or cheque.
  - (e) A summary of the reasons for refusal to make payment mentioned by the debtor upon making the protest.
- (5) The Commercial Registry shall maintain a book for recording such particulars and every person may have access thereto against payment of the prescribed fees.

#### Article 500

- (1) If the maturity of a commercial paper falls on a public holiday, a claim for payment shall not be made except on the following business day.
- (2) In addition, no action shall be taken with regard to the commercial paper, particularly presenting it for acceptance, making a protest or an alternative action except on a business day.
- (3) Where a certain time limit has been fixed for taking a certain action relating to the commercial , and where the expiry date falls on a public or bank holiday , the time limit shall be extended to the following business day.
- (4) The calculation of the time limit shall be inclusive of the public holidays falling during it.

Article 501

In the calculation of the legal or agreed time limit relevant to commercial papers, the first day thereof shall not be included.

Article 502

The law courts shall not grant periods of grace for payment of the value of a commercial paper or for taking any action with regard thereto except in the events provided for in the Law.

Article 503

- (1) In the cases where the Law requires the subscribing by an interested party to the commercial paper of his signature, such signature may be made by an official seal or a thumb impression.
- (2) The testimony of two witnesses shall be required that the owner of the official seal or the person making the thumb impression has done so in the presence of the witnesses who were aware of what has been signed.

LEGISLATIVE DECREE NO.15 OF 1991 WITH RESPECT TO  
AMENDING ARTICLE 81 OF THE LAW OF COMMERCE  
PROMULGATED BY LEGISLATIVE DECREE NO.7 OF 1987

We, Isa Bin Sulman Al Khalifa, Amir of the State of Bahrain,  
having examined the Constitution,  
and Amiri Decree No.4 of 1975,  
and Legislative Decree No.7 of 1987 with respect to promulgating  
the Law of Commerce,  
and upon the submission of the Minister for Commerce and  
Agriculture,  
and with the approval of the Council of Ministers,  
HEREBY ENACT THE FOLLOWING LAW:

Article 1

For the provisions of Article 81 of the Law of Commerce, promulgated by  
Legislative Decree No.7 of 1987, there shall be substituted the  
following:

"Article 81:

- 1) Interest for delay of settlement of commercial debts shall accrue  
upon maturity, unless the law or an agreement stipulates otherwise.  
In no case shall the total interest payments received by a creditor  
exceed the principal debt amount on the basis of which interest has  
been charged in the cases of debts the repayment period of which  
does not exceed seven years. Every agreement to the contrary shall  
be null and void.
- 2) A creditor shall have the right to claim supplementary damages to  
be added to the delay interest without the need for proving that  
the damage in excess of such interest has been caused by the  
debtor's deceit or gross negligence."

Article 2

The Ministers, each in his respective capacity, shall implement this Law  
which shall come into effect from the date of its publication in the  
Official Gazette.

Signed: Isa Bin Sulman Al Khalifa  
Amir of the State of Bahrain

Dated: 20 July 1991

LEGISLATIVE DECREE NO.4 OF 1992 WITH RESPECT TO  
AMENDING ARTICLE 81 OF THE LAW OF COMMERCE  
PROMULGATED BY LEGISLATIVE DECREE NO.7 OF 1987

We, Isa Bin Sulman Al Khalifa, Amir of the State of Bahrain,  
having reviewed the Constitution,  
and Amiri Order No.4 of 1975,  
and Legislative Decree No.7 of 1987 promulgating the Law of  
Commerce, as amended by Legislative Decree No.15 of 1991,  
and upon the submission of the Minister for Commerce and  
Agriculture,  
and with the approval of the Council of Ministers,

HEREBY DECREE THE FOLLOWING LAW:

Article 1

For the provisions of Article 81 of the Law of Commerce promulgated by  
Legislative Decree No.7 of 1987, as amended by Legislative Decree No.15  
of 1991, there shall be substituted the following:

"Article 81

1. Interest for delay of settlement of commercial debts shall accrue upon maturity unless the Law or an agreement stipulates otherwise.
2. In no case shall the total interest payments charged by the creditor be in excess of the principal debt amount on the basis of which interest has been charged in the case of debts the re-payment period of which exceeds seven years. Every agreement to the contrary shall be null and void.
3. The provision of paragraph 2 shall not be applicable to interest for debts arising from transactions concluded in a foreign currency.
4. A creditor shall have the right to claim supplementary damages to be added to the delay interest without the need for proving that the damages in excess of such interest have been caused by the debtor's deceit or gross failure."

Article 2

The Ministers, each in his respective capacity, shall implement this Law which shall come into force from the date of its publication in the Official Gazette.

Signed: Isa Bin Sulman Al Khalifa  
Amir of the State of Bahrain

Dated: 3 February 1992

**LEGISLATIVE DECREE NO.13 OF 1993  
WITH RESPECT TO AMENDING PARAGRAPH (1) OF ARTICLE 479  
OF THE LAW OF COMMERCE PROMULGATED BY  
LEGISLATIVE DECREE NO.7 OF 1987**

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We, Isa Bin Sulman Al Khalifa, Amir of the State of Bahrain,  
having examined the Constitution,  
and Amiri Order No.4 of 1975,  
and the Law of Commerce promulgated by Legislative Decree  
No.7 of 1987, as amended,  
and upon the submission of the Minister for Commerce and  
Agriculture,  
and with the approval of the Council of Ministers,  
HEREBY DECREE THE FOLLOWING LAW:

**Article 1**

For the provisions of Paragraph (1) of Article 479 of the  
abovementioned Law of Commerce, the following shall be  
substituted:-

"1. The drawer or bearer of cheque may stipulate that it shall  
not be paid in cash by writing on the face thereof the following  
words "to be credited to the account" or any other words to this  
effect. In this case, a cheque shall not be negotiable by way of  
endorsement and the drawee shall only settle the amount of the  
cheque by means of book entries such as crediting the account,  
bank transfer or making a set-off. The said written entries  
shall be tantamount to payment."

**Article 2**

The Ministers each in his respective capacity shall implement  
this Law which shall come into force from the date of its  
publication in the Official Gazette.

Signed: Isa Bin Sulman Al Khalifa  
Amir of the State of Bahrain

Dated: 4 September 1993