

# Commercial Code

(Act No. 48 of March 9, 1899)

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**Part I General Provisions**  
**Chapter I General Rules**

(Purpose, etc.)

Article 1 (1) Businesses, commercial transactions and any other commercial affairs of merchants shall be governed by the provisions of this Code, except for those otherwise provided for in other Acts.

(2) Commercial affairs for which there are no provisions in this Code shall be governed by commercial custom, and if there is no commercial custom, they shall be governed by the provisions of the Civil Code (Act No. 89 of 1896).

(Commercial Transactions by Public Juridical Persons)

Article 2 Commercial transactions conducted by public juridical persons shall be governed by the provisions of this Code, except for those otherwise provided for in laws and regulations.

(Transactions Constituting Commercial Transactions for One of the Parties)

Article 3 (1) Where an act constitutes a commercial transaction for one of the parties, this Code shall apply to both parties.

(2) Where two or more persons form one of the parties, and an act constitutes a commercial transaction for any one of them, this Code shall apply to all of them.

**Chapter II Merchants**

(Definitions)

Article 4 (1) The term "merchant" as used in this Code means a person who engages in the business of conducting a commercial transaction in his/her own name.

(2) A person who engages in the business of selling goods at a store or any other facility similar thereto or a person who engages in the mining business shall be deemed to be a merchant even if such person does not engage in the business of conducting a commercial transaction.

(Registration of Business by Minor)

Article 5 When a minor carries out any of the businesses set forth in the preceding Article, a registration thereof shall be made.

(Registration of Business by Guardian)

Article 6 (1) When a guardian carries out any of the businesses set forth in

Article 4 on behalf of a ward, a registration thereof shall be made.

(2) No limitation on a guardian's authority of representation may be duly asserted against a third party who has no knowledge of such limitation.

(Petty Merchant)

Article 7 The provisions of Article 5, the preceding Article, the following Chapter, Article 11, paragraph (2), Article 15, paragraph (2), the first sentence of Article 17, paragraph (2), Chapter V, and Article 22 shall not apply to a petty merchant (meaning a merchant the value of whose property used for his/her business as specified by Ordinance of the Ministry of Justice does not exceed the amount specified by Ordinance of the Ministry of Justice).

### **Chapter III Commercial Registration**

(General Rules)

Article 8 The matters to be registered pursuant to the provisions of this Part shall be registered in a commercial registry upon application from the party concerned, pursuant to the provisions of the Commercial Registration Act (Act No. 125 of 1963).

(Effect of Registration)

Article 9 (1) The matters to be registered pursuant to the provisions of this Part may not be duly asserted against a third party who has no knowledge of such matters until after the registration. The same shall apply after the registration if a third party did not know that such matters were registered, based on justifiable grounds.

(2) A person who has registered false matters intentionally or negligently may not duly assert the falsity of such matters against a third party who has no knowledge of such falsity.

(Registration of Changes and Extinction)

Article 10 When there is a change to matters registered pursuant to the provisions of this Part or when such matters become extinct, the relevant party shall complete the registration of the change or extinction without delay.

### **Chapter IV Trade Names**

(Selection of Trade Name)

Article 11 (1) A merchant (excluding companies and foreign companies; hereinafter the same shall apply in this Part) may use his/her surname, full name or any other name as his/her trade name.

(2) A merchant may register his/her trade name.

(Prohibition of Use of Names, etc. Causing Misidentification as Another Merchant)

Article 12 (1) No person may use, with a wrongful purpose, any name or trade name which makes it likely that the person will be mistaken for another merchant.

(2) Any merchant whose business interests have been, or are likely to be, infringed upon by the use of any name or trade name in violation of the provisions of the preceding paragraph may seek an injunction suspending or preventing the infringement against the person who infringes, or is likely to infringe, those business interests.

(Non-Criminal Fine)

Article 13 A person who violates the provisions of paragraph (1) of the preceding Article shall be punished by a non-criminal fine of not more than one million yen.

(Liability of Merchant Permitting Others to Use His/Her Trade Name)

Article 14 Any merchant who has permitted another person to carry out a business or engage in any enterprise by using his/her own trade name shall be liable, jointly and severally with such other person, in relation to any person who has conducted a transaction with such other person based on the misunderstanding that said merchant carries out said business, for the performance of any obligations arising from such transaction.

(Assignment of Trade Name)

Article 15 (1) A merchant's trade name may be assigned only when the merchant's business is also transferred or is discontinued.

(2) The transfer of a trade name under the provisions of the preceding paragraph may not be duly asserted against a third party unless it is registered.

(Non-Competition by Transferor of Business)

Article 16 (1) Unless the parties manifest their intention otherwise, a merchant who has transferred his/her business (hereinafter referred to as the "transferor" in this Chapter) may not work in the same line of business within the area of the same city, town or village (or the same ward within areas of Tokyo where special wards exist and within the designated cities set forth in Article 252-19, paragraph (1) of the Local Autonomy Act (Act No. 67 of 1947); the same shall apply hereinafter), or within the area of any of its neighboring cities, towns or villages, for 20 years from the day of the transfer of the

business.

- (2) Where the transferor has agreed to special provisions to the effect that he/she will not work in the same line of business, such special provisions shall be effective only for 30 years from the day of the transfer of the business.
- (3) Notwithstanding the provisions of the preceding two paragraphs, the transferor may not work in the same line of business for the purpose of unfair competition.

(Liability of Transferee Using Transferor's Trade Name)

- Article 17 (1) Where any merchant to whom any business is transferred (hereinafter referred to as the "transferee" in this Chapter) continues to use the trade name of the transferor, the transferee shall also be liable for the performance of any obligations arising from the business of the transferor.
- (2) The provisions of the preceding paragraph shall not apply where the transferee registers, without delay after the transfer of the business, a statement to the effect that he/she will not be liable for the performance of the obligations of the transferor. The same shall apply, in cases where the transferee and transferor give notice of the above to any third party without delay after the transfer of the business, to the third party who receives such notice.
  - (3) Where the transferee is liable for the performance of the obligations of the transferor pursuant to the provisions of paragraph (1), the liability of the transferor shall be extinguished upon the lapse of two years after the day of the transfer of the business, in relation to any obligee who does not demand the performance or does not give advance notice of his/her demand within said period.
  - (4) In the case prescribed in paragraph (1), any performance made to the transferee with respect to any claim arising from the business of the transferor shall be effective if the party performing such obligations has no knowledge of and is not grossly negligent in not knowing that the claim has thus arisen.

(Assumption of Obligations by Transferee)

- Article 18 (1) Even in cases where the transferee does not continue to use the trade name of the transferor, if he/she advertises to the effect that he/she will assume the obligations arising from the business of the transferor, the obligees of the transferor may demand the performance of the said obligations from the transferee.
- (2) Where the transferee is liable for the performance of the obligations of the transferor pursuant to the provisions of the preceding paragraph, the liability of the transferor shall be extinguished upon the lapse of two years after the day of the advertisement as set forth in said paragraph, in relation to any

obligee who does not demand the performance of the said obligations or does not give advance notice of his/her demand within said period.

## **Chapter V Commercial Books**

- Article 19 (1) A merchant's accounting shall be subject to the accounting practices generally accepted as fair and appropriate.
- (2) A merchant shall prepare accurate commercial books (meaning accounting books and balance sheets; hereinafter the same shall apply in this Article) in a timely manner as provided by Ordinance of the Ministry of Justice.
- (3) A merchant shall preserve his/her commercial books and important materials regarding his/her business for ten years from the time of the closing of the books.
- (4) The court may, upon petition or by its own authority, order the parties to a suit to submit commercial books in whole or in part.

## **Chapter VI Employees of Merchants**

(Manager)

Article 20 A merchant may appoint a manager(s) and have such manager(s) carry out his/her business at his/her head office or branch office.

(Manager's Authority of Representation)

- Article 21 (1) A manager shall have the authority to engage in any and all judicial or extrajudicial acts on behalf of the merchant in connection with the merchant's business.
- (2) A manager may appoint or dismiss other employee(s).
- (3) No limitation on a manager's authority of representation may be duly asserted against a third party who has no knowledge of such limitation.

(Registration of Manager)

Article 22 When a merchant has appointed a manager(s), a registration thereof shall be made. The same shall apply to the extinction of a manager's authority of representation.

(Non-Competition by Manager)

- Article 23 (1) A manager shall not conduct any of the following acts without the permission of the merchant:
- (i) engage in his/her own business;
  - (ii) conduct, for him/herself or for a third party, any transaction which is in the line of the business of the merchant;

- (iii) become an employee of another merchant or a company or foreign company; or
- (iv) become a director, executive officer or any member who executes the business of a company.

(2) If a manager engages in the act set forth in item (ii) of the preceding paragraph in violation of the provisions of said paragraph, the amount of profit obtained by the manager or third party as a result of such act shall be presumed to be the amount of damage suffered by the merchant.

(Apparent Manager)

Article 24 Any employee with a title which indicates that he/she is the chief of operations of the business office of a merchant shall be deemed to have the authority to engage in any and all extrajudicial acts in connection with the operations of said business office; provided, however, that this shall not apply where a counterparty acts with knowledge of his/her lack of authority.

(Entrustment of Specific Types of Matters or Specific Matters to Employees)

Article 25 (1) Any employee to whom a specific type of matter or a specific matter in connection with the business of a merchant is entrusted shall have the authority to engage in any and all extrajudicial acts in connection with the specific type of matter or specific matter.

(2) No limitation on the authority of the representation of the employee set forth in the preceding paragraph may be duly asserted against a third party who has no knowledge of such limitation.

(Employees of Stores for the Purpose of Selling Goods, etc.)

Article 26 Any employee of a store whose purpose is the sale, etc. (meaning sale, lease and any other acts similar thereto; hereinafter the same shall apply in this Article) of goods shall be deemed to have the authority to conduct the sale, etc. of the goods located in the store; provided, however, that this shall not apply where a counterparty acts with knowledge of his/her lack of authority.

## **Chapter VII Commercial Agents**

(Duty to Give Notice)

Article 27 When any commercial agent (meaning a person who acts on behalf of a merchant as an agent or intermediary for any transaction in the ordinary line of the business of the merchant, and who is not an employee of the merchant; hereinafter the same shall apply in this Chapter) conducts any transaction as an agent or intermediary, the commercial agent shall give notice of such fact to the merchant without delay.

(Non-Competition by Commercial Agent)

Article 28 (1) A commercial agent shall not conduct any of the following acts without the permission of the merchant:

- (i) conduct, for himself/herself or for a third party, any transaction which is in the line of business of the merchant; and
- (ii) become a director, executive officer or any member who executes the business of a company which carries out the same kind of business as the merchant.

(2) If a commercial agent conducts the act set forth in item (i) of the preceding paragraph in violation of the provisions of said paragraph, the amount of profit obtained by the commercial agent or any third party as a result of such act shall be presumed to be the amount of damage suffered by the merchant.

(Authority to Receive Notice)

Article 29 A commercial agent to whom the sale of goods or the role of intermediary for such sale is consigned shall have the authority to receive the notice set forth in Article 526, paragraph (2) and any other notice regarding the sale and purchase.

(Cancellation of Commercial Agency Contract)

Article 30 (1) Either a merchant or his/her commercial agent may, when they have not specified the period of the commercial agency contract, cancel the contract by giving two months' advance notice.

(2) Notwithstanding the provisions of the preceding paragraph, if there is any compelling reason, either a merchant or his/her commercial agent may cancel the commercial agency contract at any time.

(Right of Retention of Commercial Agent)

Article 31 If any claim arising from acting as an agent or intermediary for any transaction is due, the commercial agent may retain any property or negotiable instruments of value which he/she possesses on behalf of the merchant until the claim is satisfied; provided, however, that this shall not apply where the parties manifest their intention otherwise.

## **Chapter VIII Miscellaneous Provisions**

Article 32 Where a person's signature is required pursuant to the provisions of this Code, affixing his/her name and seal may be substituted for the signature.

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## **Part II Commercial Transactions**

### **Chapter I General Provisions**

(Transactions Absolutely Regarded as Commercial Transactions due to their Nature)

Article 501 The following acts shall be commercial transactions:

- (i) an act for the purpose of acquiring for value any movables, real property or negotiable instruments of value with the intention of assigning such property

- for profit, or for the purpose of assigning the property thus acquired;
- (ii) an act for the purpose of contracting to supply any movables or negotiable instruments of value to be acquired from others and acquiring for value such property in order to perform such contract;
- (iii) a transaction conducted on an exchange; and
- (iv) an act relating to bills and notes and other commercial instruments.

(Transactions Regarded as Commercial Transactions When Conducted as Business)

Article 502 The following acts shall be commercial transactions only when they are conducted as a business; provided, however, that this shall not apply where any such act is conducted by a person who manufactures products or engages in labor exclusively for the purpose of earning wages:

- (i) an act for the purpose of acquiring for value or leasing from others any movables or real property with the intention of leasing such property for profit, or for the purpose of leasing to others the property thus acquired or leased;
- (ii) an act relating to manufacturing and processing conducted for others;
- (iii) an act relating to the supply of electricity or gas;
- (iv) an act relating to transportation;
- (v) a contract for work or labor;
- (v) an act relating to publishing, printing or photography;
- (vii) a transaction at an establishment intended for gathering customers;
- (viii) money exchange and other banking transaction;
- (ix) insurance;
- (x) undertaking of a deposit;
- (xi) an act relating to brokerage or of an intermediary;
- (xii) undertaking of the role as an agent for a commercial transaction; and
- (xiii) undertaking of a trust.

(Auxiliary Commercial Transactions)

Article 503 (1) Any act conducted by a merchant for his/her business shall be a commercial transaction.

(2) Any act of a merchant shall be presumed to be conducted for his/her business.

(Agency for Commercial Transaction)

Article 504 Even where an agent for a commercial transaction has conducted a transaction without representing that it was conducted on behalf of the principal, such act of the agent shall be binding on the principal; provided, however, that if the other party did not know that such act had been conducted by the agent on behalf of the principal, these provisions shall not preclude the



other party from demanding the performance of the said transaction to the agent.

(Mandate of Commercial Transactions)

Article 505 A mandatary for a commercial transaction may conduct any act which he/she is not mandated to conduct, to the extent that it does not conflict with the main purpose of the mandate.

(Special Provisions for Grounds for Termination of Authority of Representation)

Article 506 The authority of an agent privately appointed by mandate for a commercial transaction shall not terminate upon the death of the principal.

(Offer of Contract between Merchants in Direct Communication)

Article 507 Where merchants are in direct communication with each other, if the party who has received an offer of a contract does not immediately accept it, such offer shall cease to be effective.

(Offer of Contract between Merchants at Distance)

Article 508 (1) Where merchants are at distance from each other, if the party who has received an offer of a contract that was made without specifying a period for acceptance does not dispatch a notice of acceptance within a reasonable period of time, such offer shall cease to be effective.

(2) The provisions of Article 523 of the Civil Code shall apply mutatis mutandis to the case referred to in the preceding paragraph.

(Obligation of the Party Receiving Offer of Contract to Give Notice of Acceptance or Refusal)

Article 509 (1) When a merchant has received, from a person with whom he/she makes transactions ordinarily, the offer of a contract in the line of the business in which he/she works, he/she shall dispatch a notice of acceptance or refusal of the offer of the contract without delay.

(2) When a merchant fails to dispatch a notice as set forth in the preceding paragraph, he/she shall be deemed to have accepted the offer of the contract set forth in said paragraph.

(Obligation of the Party Receiving Offer of Contract to Take Custody of Goods)

Article 510 Where a merchant has received the offer of a contract in the line of business in which he/she works and also received any goods upon such offer, he/she shall store such goods at the expense of the offeror, even when he/she refuses the offer; provided, however, that this shall not apply if the value of the

goods is insufficient for compensating for the costs of the storage or the merchant may suffer any damage from the storage.

(Joint and Several Liability for Obligation Among Multi-Parties)

Article 511 (1) When two or more persons assume an obligation by way of an act that constitutes a commercial transaction for any one or all of them, they shall assume the obligation jointly and severally.

(2) Where there is a guarantor, if an obligation has arisen from a commercial transaction conducted by the principal obligor or the guarantee is provided as a commercial transaction, the principal obligor and the guarantor shall assume the obligation jointly and severally even when they have assumed the obligation by way of separate acts.

(Right to Claim Remuneration)

Article 512 When a merchant has conducted any act for another person within the scope of his/her business, he/she may claim a reasonable remuneration.

(Right to Claim Interest)

Article 513 (1) When a money loan for consumption is provided between merchants, the lender may claim statutory interest (meaning interest at a statutory interest rate as set forth in the following Article; the same shall apply hereinafter).

(2) When a merchant has paid money on behalf of another person within the scope of his/her business, he/she may claim statutory interest for the period from the date of such payment.

(Statutory Interest Rate for Commercial Affairs)

Article 514 The statutory interest rate applicable to obligations arising from commercial transactions shall be six percent per annum.

(Exclusion from Application of the Prohibition on Disposition of the Thing Pledged by Contract)

Article 515 The provisions of Article 349 of the Civil Code shall not apply to a pledge created to secure an obligation arising from a commercial transaction.

(Place of Performance of Obligation)

Article 516 (1) When the place where an obligation arising from a commercial transaction is to be performed cannot be specified owing to the nature of the transaction or the manifestation of the intentions of the parties, the delivery of a specified thing shall be performed at the place where such thing exists at the time of the transaction, and any other obligation shall be performed at the

current business office of the obligee (if the obligee has no business office, at his/her domicile), respectively.

(2) The payment of debts payable to order and of debts payable to bearer shall be performed at the current business office of the obligor (if the obligor has no business office, at his/her domicile).

(Presentation of Instruments of Debts Payable to Order, etc. and Delay in Performance of Obligations)

Article 517 The obligor of a debt payable to order or to bearer shall be responsible for any delay after the time that the debt becomes due and the bearer demands performance of the obligation by presenting the instrument of the debt even if a due date has been set for the performance of the obligation.

(Method of Exercise of Right in the Event of Loss of Negotiable Instruments of Value)

Article 518 Where the holder of a negotiable instrument of value issued for the purpose of delivering money or other things or negotiable instruments of value has lost the negotiable instrument of value, when he/she files a petition for public notification as prescribed in Article 114 of the Non-Contentious Cases Procedure Act (Act No. 51 of 2011), he/she may have the obligor of the negotiable instrument deposit the subject matter of the obligation, or have the obligor perform the obligation in line with the purpose of the negotiable instrument while providing reasonable security.

(Method of Negotiation of Negotiable Instrument of Value and Bona Fide Acquisition)

Article 519 (1) With regard to the negotiation of a negotiable instrument of value issued for the purpose of delivering money or other things or negotiable instruments of value, the provisions of Article 12, Article 13, and Article 14, paragraph (2) of the Bills and Notes Act (Act No. 20 of 1932) or the provisions of Article 5, paragraph (2) and Article 19 of the Checks Act (Act No. 57 of 1933), depending on the nature of the negotiable instrument of value.

(2) With regard to the acquisition of a negotiable instrument of value issued for the purpose of delivering money or other things or negotiable instruments of value, the provisions of Article 21 of the Checks Act shall apply *mutatis mutandis*.

(Trading Hours)

Article 520 If trading hours for merchants are fixed by laws and regulations or custom, obligations may be performed or the performance of obligations may be demanded only during such trading hours.

(Right of Retention of Merchants)

Article 521 When any claim between merchants arising from an act that constitutes a commercial transaction for both parties is due, the obligee may retain any object or negotiable instruments of value owned by the obligor of which the obligee has taken possession by way of the commercial transaction with the obligor, until the claim is satisfied; provided, however, that this shall not apply where the parties manifest their intention otherwise.

(Extinctive Prescription for Commercial Affairs)

Article 522 Unless otherwise provided for in this Code, any claim arising from a commercial transaction shall be extinguished by prescription if not exercised for five years; provided, however, that if a period of prescription shorter than five years is provided for in other laws and regulations, such provisions shall prevail.

Article 523 Deleted

## **Chapter II Sale**

(Deposit and Auction of Property by Seller)

Article 524 (1) When, in a sales transaction between merchants, the buyer refuses to receive or is unable to receive the property that is the subject matter of the sale, the seller may deposit the property or may put it up for auction after making a demand for the receipt of the property by specifying a reasonable period of time. In this case, when the seller has deposited the property or put it up for auction, he/she shall dispatch a notice of such fact to the buyer without delay.

(2) Where the price of the property is likely to decline due to damage or any other reasons, such property may be put up for auction without making the demand set forth in the preceding paragraph.

(3) When the seller has put up for auction the property that is the subject matter of a sale pursuant to the provisions of the preceding two paragraphs, he/she shall deposit the proceeds from the auction; provided, however, that this shall not preclude the seller from appropriating the whole or part of the proceeds for the payment of the purchase price.

(Cancellation by reason of Delay in Performance of Sale Where Time Is of Essence)

Article 525 In a sales transaction between merchants in which, due to the nature of the sale or the manifestation of intention of the parties, the purpose

of the contract cannot be achieved unless the obligation is performed at a specified date and time or within a certain period of time, if one of the parties has failed to perform the obligation by the time when such date and time or period has lapsed, the other party shall be deemed to have cancelled the contract, except where he/she has immediately demanded performance of the obligation.

(Inspection of Property by Buyer and Giving Notice of Defects)

Article 526 (1) In a sales transaction between merchants, the buyer shall, upon receiving the property that is the subject matter of the sale, inspect the property without delay.

(2) In the case prescribed in the preceding paragraph, when the buyer, as a result of the inspection under the provisions of said paragraph, has found any defect or any shortfall in the quantity of the property that is the subject matter of sale, he/she may not cancel the contract nor demand a reduction of the purchase price or compensation for the damage unless he/she immediately dispatches a notice of such defect or shortfall to the seller. The same shall apply where the property that is the subject matter of the sale contains a defect that is not immediately obvious and where the buyer finds such defect within six months.

(3) The provisions of the preceding paragraph shall not apply where the seller had knowledge of the defect or the shortage of quantity.

(Storage and Deposit of Property by Buyer)

Article 527 (1) In the case prescribed in paragraph (1) of the preceding Article, the buyer shall store or deposit the property that is the subject matter of the sale at the expense of the seller, even when he/she cancels the contract; provided, however, that if the property is likely to be lost or damaged, the buyer shall put the property up for auction with the permission of the court and store or deposit the proceeds from the auction.

(2) The case pertaining to the permission set forth in the proviso to the preceding paragraph shall be subject to the jurisdiction of the district court having jurisdiction over the location of the property that is the subject matter of the sale set forth in said paragraph.

(3) When the buyer puts the property that is the subject matter of the sale up for auction pursuant to the provisions of paragraph (1), he/she shall dispatch a notice of such fact to the seller without delay.

(4) The provisions of the preceding three paragraphs shall not apply where the business offices of the seller and the buyer (or their domiciles if they do not have any business offices) are located in the area of the same municipality.

Article 528 The provisions of the preceding Article shall apply to the goods which are delivered by the seller to the buyer and found to be different from the goods ordered, and it shall also apply to any portion of the goods delivered by the seller to the buyer which exceeds the quantity of the goods ordered.

### **Chapter III Current Account**

(Current Account)

Article 529 A current account shall be effective in cases where merchants, or a merchant and a person who is not a merchant, make transactions ordinarily, if they agree to set off the total amounts of claims and obligations arising from their transactions during a certain period of time and to pay any balance thereof.

(Special Provisions for Claims and Obligations Arising from Commercial Instruments)

Article 530 Where claims and obligations arising from bills and notes and other commercial instruments are included in a current account, if the obligor of such commercial instruments does not perform his/her obligations, the parties may exclude the item relating to such obligations from the current account.

(Current Account Period)

Article 531 If the parties do not specify a period for which a set-off should be made, the period shall be six months.

(Acknowledgment of Current Account)

Article 532 When the parties acknowledge a statement of account in which claim and obligation items are recorded, they may not object to these items; provided, however, that this shall not apply if there is any mistake or omission in the contents of the statement of account.

(Right to Claim Interest on a Balance, etc.)

Article 533 (1) For any balance derived from a set-off, the obligee may claim statutory interest thereon for the period from the date of the closing of the account.

(2) The provisions of the preceding paragraph shall not preclude the accrual of interest from the day on which the items of the claims and obligations subject to the set-off were included in the current account.

(Cancellation of Current Account)

Article 534 Each of the parties to a current account may cancel the account at

any time. In this case, the party who cancels the current account may immediately close the account and demand payment of any balance.

#### **Chapter IV Silent Partnership**

(Silent Partnership Contract)

Article 535 A silent partnership contract shall become effective when one party to the contract promises to make a contribution towards the other party's business, and the other party promises to distribute the profits arising from the business.

(Contribution by Silent Partner and Rights and Obligations Thereof)

Article 536 (1) A contribution made by a silent partner shall be included in the property of the business operator.

(2) A silent partner may only designate money or other property as the subject matter of the contribution.

(3) A silent partner may not execute the business of nor represent the business operator.

(4) A silent partner shall not have any rights against or obligations towards any third party in connection with any act conducted by the business operator.

(Liability of Silent Partner Permitting the Use of His/Her Own Name, etc.)

Article 537 When a silent partner has permitted the use of his/her own surname or full name in the trade name of the business operator or the use of his/her own trade name in the trade name of the business operator, he/she shall be liable, jointly and severally with the business operator, in connection with any obligations arising from such use.

(Restriction on Distribution of Profits)

Article 538 When a contribution is decreased due to any loss thereon, the silent partner may not demand the distribution of profits until after he/she has compensated for such loss.

(Inspection of Balance Sheet and of the Status of Business and Property)

Article 539 (1) A silent partner may, at the end of the business year, during the business hours of the business operator, make the following requests or inspect the status of the business and property of the business operator:

(i) if the balance sheet of the business operator is prepared in the form of a document, a request for the inspection or copying of such document; and

(ii) if the balance sheet of the business operator is prepared in the form of an electromagnetic record (meaning a record made in an electronic form, a

magnetic form or any other form not recognizable to human perception, which is used in information processing by computers and specified by Ordinance of the Ministry of Justice), a request for the inspection or copying of anything which indicates the matters recorded in the electromagnetic record by a method specified by Ordinance of the Ministry of Justice.

- (2) A silent partner may, when there are material grounds, inspect the status of the business and property of the business operator at any time, with the permission of the court.
- (3) The case pertaining to the permission set forth in the preceding paragraph shall be subject to the jurisdiction of the district court having jurisdiction over the location of the business office of the business operator (or the domicile of the business operator if he/she has no business office).

#### (Cancellation of Silent Partnership Contract)

Article 540 (1) Where a silent partnership contract does not specify the duration of the silent partnership or it provides that the silent partnership is to continue to exist for the life of either party, each party may cancel the contract at the end of the business year; provided, however, that such party who cancels the contract shall give notice six months in advance.

- (2) Regardless of whether or not the duration of a silent partnership is specified, each party may cancel the silent partnership contract at any time when there is a compelling reason.

#### (Grounds for Termination of Silent Partnership Contract)

Article 541 In addition to the cases referred to in the preceding Article, a silent partnership contract shall be terminated on the following grounds:

- (i) the successful completion of the business that is the objective of the silent partnership, or the impossibility of such successful completion;
- (ii) the death of the business operator, or a ruling of commencement of guardianship given to the business operator; or
- (iii) an order of commencement of bankruptcy proceedings given to the business operator or the silent partner.

#### (Return of the Value of Contribution upon Termination of Silent Partnership Contract)

Article 542 When a silent partnership contract is terminated, the business operator shall return the value of the contribution to the silent partner; provided, however, that if the contribution is decreased due to any loss thereon, it shall be sufficient to return any value that remains.

## **Chapter V Brokerage Business**



Article 543 The term "broker" means a person who engages in the business of acting as an intermediary for a commercial transaction between other parties.

Article 544 A broker may not receive payment or any other performance on behalf of the parties with regard to an act that he/she has conducted as an intermediary; provided, however, that this shall not apply if there is any manifestation of intention or custom to the contrary.

Article 545 When a broker has received any sample with regard to an act that he/she conducts as an intermediary, he/she shall retain the sample until such act is completed.

Article 546 (1) When any act is effected between the parties, the broker shall, without delay, prepare a document stating the name or trade name of each party and the date and gist of the act, and deliver the document to each party, after signing it.

(2) Except where the parties are required to perform their obligations immediately, the broker shall have each party sign the document set forth in the preceding paragraph, and deliver the signed document to the other party.

(3) In the cases referred to in the preceding two paragraphs, if one of the parties does not receive or sign the document, the broker shall dispatch a notice of such fact to the other party without delay.

Article 547 (1) A broker shall enter the matters listed in paragraph (1) of the preceding Article in his/her books.

(2) The parties may request the broker to deliver a transcript of his/her books with regard to an act that he/she has conducted on their behalf.

Article 548 When either party orders the broker not to disclose the party's name or trade name to the other party, the broker may not state such party's name or trade name in the document set forth in Article 546, paragraph (1) or in the transcript set forth in paragraph (2) of the preceding Article.

Article 549 When the broker has not disclosed either party's name or trade name to the other party, he/she shall be responsible for performing the obligation to the other party him/herself.

Article 550 (1) A broker may not claim any remuneration until he/she completes the procedure set forth in Article 546.

(2) The remuneration for the broker shall be borne equally by the parties.

## Chapter VI Commission Agency Business

Article 551 The term "commission agent" means a person who engages in the business of selling or purchasing goods in his/her own name on behalf of another person.

Article 552 (1) A commission agent shall acquire rights against and assume obligations in relation to the other party as they arise from the sale or purchase that the commission agent has engaged in on behalf of another person.

(2) In addition to the provisions of this Chapter, the provisions on mandates and agencies shall apply *mutatis mutandis* between the commission agent and the consignor.

Article 553 A commission agent shall, with regard to the sale or purchase that he/she has engaged in on behalf of the consignor, be responsible for performing the other party's obligation him/herself if the other party does not perform the obligation; provided, however, that this shall not apply if there is any manifestation of intention or custom to the contrary.

Article 554 Where a commission agent has sold goods at a price lower than that designated by the consignor or has purchased goods at a price higher than that designated by the consignor, if the commission agent has paid any difference him/herself, such sale or purchase shall be effective in relation to the consignor.

Article 555 (1) When a commission agent has been entrusted to sell or purchase goods with quotations at an exchange, he/she may become the purchaser or the seller him/herself. In this case, the price of the sale or purchase shall be determined by the quotations at the exchange as of the time when the commission agent dispatched a notice to the effect that he/she became the purchaser or the seller.

(2) In the case referred to in the preceding paragraph, the commission agent may claim remuneration from the consignor.

Article 556 Where a commission agent has been entrusted to purchase goods, if the consignor refuses to receive or is unable to receive the goods purchased, the provisions of Article 524 shall apply *mutatis mutandis*.

Article 557 The provisions of Article 27 and Article 31 shall apply *mutatis mutandis* to a commission agent.

Article 558 The provisions of this Chapter shall apply mutatis mutandis to a person who engages in the business of conducting any act other than selling or purchasing goods in his/her own name on behalf of another person.

### **Chapter VII Forwarding Agency Business**

Article 559 (1) The term "freight forwarder" means a person who engages in the business of brokerage for the transportation of goods in his/her own name.

(2) Unless otherwise provided in this Chapter, the provisions on a commission agent shall apply mutatis mutandis to a freight forwarder.

Article 560 A freight forwarder may not be released from the liability to compensate for damage with regard to the damage to or the loss or delay of the freight unless he/she proves that he/she or his/her employee was not negligent in exercising due care in receiving, delivering or storing the freight, choosing a carrier or another freight forwarder or dealing with any other affairs concerning the transportation.

Article 561 (1) A freight forwarder may claim remuneration immediately when he/she has delivered the freight to a carrier.

(2) Where the amount of freight charge is specified by a freight forwarding contract, the freight forwarder may not claim additional remuneration unless there are any special provisions to the contrary.

Article 562 A freight forwarder may retain the freight only for the remuneration receivable for the freight, the freight charge, any payment made on behalf of or advance payment made to the consignor.

Article 563 (1) Where two or more persons conduct brokerage for freight forwarding in succession, the second and subsequent freight forwarders shall be obliged to exercise the rights of their predecessors on behalf of such predecessors.

(2) In the case referred to in the preceding paragraph, the second and subsequent freight forwarders shall acquire the rights of each of their predecessors when they perform their obligations to their predecessors.

Article 564 A freight forwarder shall acquire a carrier's rights when he/she performs his/her obligation to such carrier.

Article 565 (1) A freight forwarder may carry out transportation him/herself if

there are no special provisions to the contrary. In this case, the freight forwarder shall have the same rights and obligations as the carrier.

- (2) When a freight forwarder prepares an inland bill of lading at the request of the consignor, it shall be deemed that the freight forwarder carries out the transportation him/herself.

Article 566 (1) The liability of a freight forwarder shall be extinguished by prescription when one year has elapsed from the day on which the consignee received the freight.

- (2) In the event of the total loss of the freight, the period set forth in the preceding paragraph shall be counted from the day on which the freight should have been delivered.

- (3) The provisions of the preceding two paragraphs shall not apply where the freight forwarder has knowledge of the loss or damage.

Article 567 Any claim held by a freight forwarder against a consignor or a consignee shall be extinguished by prescription when one year has elapsed.

Article 568 The provisions of Article 578 and Article 583 shall apply mutatis mutandis to the freight forwarding business.

## **Chapter VIII Transportation Business**

### **Section 1 General Provisions**

Article 569 The term "carrier" means a person who engages in the business of transporting goods or passengers on land, over lakes and rivers, or at ports and harbors.

### **Section 2 Freight Transportation**

Article 570 (1) A consignor shall deliver an invoice at the request of a carrier.

- (2) An invoice shall state the following matters and bear the consignor's signature:

- (i) the type, weight or capacity of the freight, the type of packaging, the number of packages, and the marks;
- (ii) the destination;
- (iii) the name or trade name of the consignee; and
- (iv) the place and date of the issuance of the invoice.

Article 571 (1) A carrier shall deliver an inland bill of lading at the request of a consignor.

- (2) An inland bill of lading shall state the following matters and bear the carrier's signature:
- (i) the matters listed in item (i) to item (iii) of paragraph (2) of the preceding Article;
  - (ii) the name or trade name of the consignor;
  - (iii) the freight charge; and
  - (iv) the place and date of the issuance of the inland bill of lading.

Article 572 Where an inland bill of lading is issued, the matters concerning the transportation between the carrier and the holder shall be governed by the provisions of the inland bill of lading.

Article 573 Where an inland bill of lading is issued, no disposition concerning the freight may be made unless it is by the inland bill of lading.

Article 574 An inland bill of lading, even when it is to a specified person, may be negotiated by means of endorsement; provided, however, that this shall not apply if the inland bill of lading states that such endorsement is prohibited.

Article 575 When an inland bill of lading is delivered to a person entitled to receive the freight based on such inland bill of lading, the delivery of the inland bill of lading shall have the same effect as the delivery of the freight in relation to the acquisition of the rights to be exercised upon the freight.

- Article 576 (1) When the freight is totally or partially lost due to force majeure, the carrier may not claim the freight charge for such freight. If the carrier has already received the freight charge in full or in part, he/she shall return it.
- (2) When the freight is totally or partially lost due to the nature of or any defect in the freight or the negligence of the consignor, the carrier may claim the full amount of the freight charge.

Article 577 A carrier may not be released from the liability to compensate for damage with regard to the damage to or the loss or delay of the freight unless the carrier proves that he/she or his/her freight forwarder or an employee thereof or any other person whom he/she employs for transportation was not negligent in exercising due care in the receipt, delivery, storage or transportation of the freight.

Article 578 A carrier shall not be liable to compensate for damage with regard to cash, negotiable instruments of value or other expensive goods unless the consignor declared the type and value thereof upon entrusting such goods for

transportation.

Article 579 Where two or more carriers conduct transportation in succession, they shall be jointly and severally liable to compensate for damage with regard to the damage to or the loss or delay of the freight.

Article 580 (1) The amount of damages in the event of the total loss of the freight shall be determined by the value thereof at the destination as of the day on which the freight should have been delivered.

(2) The amount of damages in the event of the partial loss or damage to the freight shall be determined by the value thereof at the destination as of the day on which the freight was delivered; provided, however, that the provisions of the preceding paragraph shall apply mutatis mutandis in the event of the delay.

(3) The freight charge or other costs that are not required to be paid by reason of the loss of or damage to the freight shall be deducted from the amount of damages set forth in the preceding two paragraphs.

Article 581 If the freight is lost, damaged or delayed due to an intentional act of the carrier or gross negligence, the carrier shall be liable to compensate for any and all damage arising therefrom.

Article 582 (1) The consignor or the holder of an inland bill of lading may request a carrier to stop the transportation or return or otherwise dispose of the freight. In this case, the carrier may claim payment of the freight charge in proportion to the transportation that he/she has already completed, any payment made on behalf of another person, and any costs arising from such disposition of the freight.

(2) The right of the consignor prescribed in the preceding paragraph shall be extinguished if the consignee demands the delivery of the freight after it has arrived at the destination.

Article 583 (1) After the freight has arrived at the destination, the consignee shall acquire the rights of the consignor arising under the transportation contract.

(2) When the consignee receives the freight, he/she shall be obliged to pay the freight charge and other costs to the carrier.

Article 584 Where an inland bill of lading is issued, the delivery of the freight may not be demanded unless it is in exchange for the inland bill of lading.

Article 585 (1) A carrier may deposit the freight when he/she is unable to

ascertain the identity of the consignee.

(2) In the case referred to in the preceding paragraph, if the carrier makes a demand on the consignor, by specifying a reasonable period of time, to the effect that the consignor should give instructions as to how to dispose of the freight but the consignor does not give any such instructions, the carrier may put the freight up for auction.

(3) When the carrier deposits the freight or puts it up for auction pursuant to the provisions of the preceding two paragraphs, he/she shall dispatch a notice of such fact to the consignor without delay.

Article 586 (1) The provisions of the preceding Article shall apply mutatis mutandis where there is any dispute over the delivery of the freight.

(2) In order to put the freight up for auction, the carrier shall, in advance, make a demand on the consignee, by specifying a reasonable period of time, to the effect that the consignee should receive the freight, and shall also make a demand on the consignor after such period expires.

(3) The carrier shall also dispatch a notice to the consignee without delay to the effect that the freight is deposited or put up for auction.

Article 587 The provisions of Article 524, paragraph (2) and paragraph (3) shall apply mutatis mutandis to the cases referred to in the preceding two Articles.

Article 588 (1) The liability of a carrier shall be extinguished when the consignee receives the freight without making any reservation and pays the freight charge and other costs; provided, however, that this shall not apply where the freight contains a defect that cannot be immediately discovered or the freight is partially lost, and the consignee dispatches a notice of such fact to the carrier within two weeks from the date of delivery.

(2) The provisions of the preceding paragraph shall not apply where the carrier has knowledge of such defect or partial loss.

Article 589 The provisions of Article 562, Article 563, Article 566 and Article 567 shall apply mutatis mutandis to a carrier.

### **Section 3 Passenger Transportation**

Article 590 (1) A passenger carrier may not be released from the liability of compensating for the damage suffered by a passenger due to transportation unless the passenger carrier proves that he/she or his/her employee was not negligent in exercising due care in carrying out the transportation.

(2) When determining the amount of damages, the court shall take into

consideration the circumstances of the victim and his/her family.

Article 591 (1) A passenger carrier shall have the same liability as a freight carrier with regard to the baggage that passengers have delivered thereto, even when the passenger carrier does not claim any special freight charge for the baggage.

(2) The provisions of Article 524 shall apply mutatis mutandis where a passenger has not demanded the delivery of his/her baggage within one week from the day on which the baggage arrives at the destination; provided, however, that if the passenger's domicile or residence is unknown, the passenger carrier shall not be required to make a demand on or give notice to the passenger.

Article 592 A passenger carrier shall not be liable to compensate for damage with regard to the loss of or damage to the baggage that passengers have not delivered thereto, except where there is negligence on the part of the passenger carrier or his/her employee.

## **Chapter IX Deposit**

### **Section 1 General Provisions**

Article 593 When a merchant receives a deposit within the scope of his/her business, he/she shall have the due care of a prudent manager for the deposited goods even when he/she will not receive any remuneration.

Article 594 (1) When a proprietor/proprietress of a hotel, eating and drinking establishment, bathhouse or any other establishment intended for gathering customers receives a deposit of goods from a customer, he/she may not be released from the liability to compensate for damage with regard to the loss of or damage to the deposited goods unless he/she proves that such loss or damage is due to force majeure.

(2) When a customer does not deposit but carries goods on his/her person within an establishment and such goods are lost or damaged due to the carelessness of the proprietor/proprietress of the establishment or any of his/her employees, the proprietor/proprietress of the establishment shall be liable to compensate for damage.

(3) A proprietor/proprietress may not be released from the liability set forth in the preceding two paragraphs even when he/she has given public notice to the effect that he/she will not assume liability for any personal effects of customers.

Article 595 A proprietor/proprietress of an establishment as set forth in the preceding Article shall not be liable to compensate for any damage arising from



the loss of or damage to the cash, negotiable instruments of value or other expensive goods of a customer unless the customer deposits such goods with the proprietor/proprietress of the establishment and declares the type and value thereof.

- Article 596 (1) The liability set forth in the preceding two Articles shall be extinguished by prescription when one year has elapsed after the proprietor/proprietress returned the deposited goods or a customer left the establishment with his/her personal effects.
- (2) In the event of the total loss of the goods, the period set forth in the preceding paragraph shall be calculated from the time when the customer left the establishment.
- (3) The provisions of the preceding two paragraphs shall not apply where the proprietor/proprietress has knowledge of the loss or damage.

## **Section 2 Warehouse Business**

Article 597 The term "warehouse business operator" means a person who engages in the business of storing goods at a warehouse on behalf of another person.

Article 598 A warehouse business operator shall deliver a deposit receipt and a pledge receipt for the deposited goods at the request of a depositor.

Article 599 A deposit receipt and a pledge receipt shall state the following matters as well as a number, and bear the warehouse business operator's signature:

- (i) the type, quality and quantity of the deposited goods, the type of packaging, the number of packages, and the marks;
- (ii) the name or trade name of the depositor;
- (iii) the place of storage;
- (iv) the storage fee;
- (v) if a storage period is specified, such period;
- (vi) if the deposited goods are covered by insurance, the insured amount, the insurance period, and the name or trade name of the insurer;
- (vii) the place and date of the issuance of the receipts.

Article 600 When a warehouse business operator has delivered a deposit receipt and a pledge receipt to a depositor, he/she shall enter the following matters in his/her books:

- (i) the matters listed in item (i), item (ii), and item (iv) to item (vi) of the

- preceding Article; and
- (ii) the numbers assigned to the receipts and the date of the issuance thereof.

Article 601 (1) The holder of a deposit receipt and a pledge receipt may request a warehouse business operator to divide the deposited goods and deliver new deposit receipts and pledge receipts for the respective portions of the goods. In this case, the holder shall return the initial deposit receipt and pledge receipt to the warehouse business operator.

- (2) The costs for the division of the deposited goods and the delivery of deposit receipts and pledge receipts as prescribed in the preceding paragraph shall be borne by the holder of the initial receipts.

Article 602 Where a deposit receipt and a pledge receipt are issued, the matters concerning the deposit of goods between the warehouse business operator and the holder of the receipts shall be governed by the provisions stated on the receipts.

Article 603 (1) A deposit receipt and a pledge receipt, even when they are to a specified person, may be negotiated or pledged by means of endorsement; provided, however, that this shall not apply if the receipts state that their endorsement is prohibited.

- (2) A deposit receipt and a pledge receipt may not be negotiated separately until the holder of the deposit receipt puts the deposited goods in pledge.

Article 604 The provisions of Article 573 and Article 575 shall apply *mutatis mutandis* to a deposit receipt and a pledge receipt.

Article 605 When a deposit receipt or a pledge receipt is lost, the holder thereof may request the delivery of another receipt, while providing reasonable security. In this case, the warehouse business operator shall make an entry in his/her books to that effect.

Article 606 (1) In order to make the first endorsement on a pledge receipt, the endorser shall write the amount of the claim, interest and due date on the receipt.

- (2) Unless the first pledgee writes the matters listed in the preceding paragraph on the deposit receipt and signs it, the pledge may not be duly asserted against a third party.

Article 607 The holder of a deposit receipt shall be liable to pay the amount of the claim and interest as written on the deposit receipt with the deposited

goods.

Article 608 A claim held by the holder of a pledge receipt shall be satisfied at the business place of the warehouse business operator.

Article 609 When the holder of a pledge receipt does not receive any payment on the due date, he/she shall have a protest made pursuant to the provisions on any relevant bills and notes.

Article 610 The holder of a pledge receipt may not demand an auction of the deposited goods until after one week has elapsed from the day for protest.

Article 611 (1) A warehouse business operator shall pay to the holder of a pledge receipt, in exchange for the receipt, an amount that remains after deducting the costs for an auction, the taxes imposed on the deposited goods, the storage fee and any other costs for the storage as well as any payment made on behalf of another person, from the proceeds from the auction.

(2) If there is any remainder after deducting, from the proceeds from an auction, the costs, taxes, storage fee and payment made on behalf of another person as listed in the preceding paragraph as well as the amount of the claim of the holder of a pledge receipt, interest and expenses of protest, a warehouse business operator shall pay such remainder to the holder of the deposit receipt in exchange for the receipt.

Article 612 If the proceeds from an auction are insufficient for paying the full amount of the claim written on a pledge receipt, a warehouse business operator shall write the amount that he/she has paid on the pledge receipt and return the receipt, and make an entry in his/her books to that effect.

Article 613 (1) The holder of a pledge receipt may receive payment first with regard to the deposited goods, and if there is any shortfall in such payment, he/she may also claim payment of the shortfall from an endorser.

(2) The provisions of Article 45, paragraph (1), paragraph (3), paragraph (5), and paragraph (6), Article 48, paragraph (1), Article 49, and Article 50, paragraph (1) of the Bills and Notes Act shall apply mutatis mutandis to the claim for payment of a shortfall prescribed in the preceding paragraph.

(3) The provisions of Article 52, paragraph (3) of the Bills and Notes Act shall apply mutatis mutandis to the calculation of the amount of reimbursement in cases where the business place or domicile of the person against whom the claim for payment of a shortfall is made is located at a different place from the place where the business office or domicile of the person who makes the claim

is located.

Article 614 Where the holder of a pledge receipt has not received payment on the due date but does not have a protest made or does not demand an auction of the deposited goods within two weeks from the day for protest, he/she shall lose his/her claim against an endorser.

Article 615 The claim of the holder of a pledge receipt shall be extinguished by prescription when one year has elapsed from the due date if the claim is against the holder of a deposit receipt, and when six months have elapsed from the day on which the holder of the pledge receipt receives the delivery of the deposited goods if the claim is against an endorser of the pledge receipt; and the claim of an endorser of a pledge receipt against his/her predecessor shall be extinguished by prescription when six months have elapsed from the day on which reimbursement is made.

Article 616 (1) A depositor or the holder of a deposit receipt may request a warehouse business operator, at any time during business hours, to inspect the deposited goods, take samples out of the goods or take necessary measures to store the goods.

(2) The holder of a pledge receipt may request a warehouse business operator, at any time during business hours, to inspect the deposited goods.

Article 617 A warehouse business operator may not be released from the liability to compensate for damage with regard to the loss of or damage to the deposited goods unless he/she proves that he/she or his/her employees were not negligent in exercising due care in carrying out the storage of the goods.

Article 618 A warehouse business operator may claim the payment of the storage fee, any payment made on behalf of another person, and any other costs for the deposited goods only at the time of the removal of the goods from the warehouse; provided, however, that when part of the deposited goods are removed from the warehouse, the warehouse business operator may claim payment in proportion to such removed part.

Article 619 Where the parties have not specified a storage period, the warehouse business operator may not return the deposited goods until more than six months have elapsed from the date of the storage of the goods in the warehouse; provided, however, that this shall not apply where there are unavoidable grounds.

Article 620 Where a deposit receipt and a pledge receipt have been issued, the return of the deposited goods may not be demanded unless it is in exchange for the receipts.

Article 621 The holder of a deposit receipt may demand the return of the deposited goods even before the due date of the claim written on the pledge receipt by depositing the full amount of the claim and the interest thereon for the period until the due date with a warehouse business operator.

Article 622 (1) If the deposited goods consist of goods of the same kind and the same quality and they are divisible, the holder of a deposit receipt may deposit part of the amount of the claim and interest thereon for the period until the due date and demand the return of the part of the deposited goods in proportion to said part of the amount. In this case, the warehouse business operator shall write the amount of money which has been deposited and the quantity of the returned deposited goods on the deposit receipt, and make an entry in his/her books to that effect.

(2) The costs for the partial removal of the deposited goods prescribed in the preceding paragraph shall be borne by the holder of the deposit receipt.

Article 623 (1) In the cases referred to in the preceding two Articles, the holder of a pledge receipt shall have rights over the money which has been deposited.

(2) The provisions of Article 612 shall apply mutatis mutandis where part of the claim written on a pledge receipt is satisfied with the money deposited as set forth in paragraph (1) of the preceding Article.

Article 624 (1) The provisions of Article 524, paragraph (1) and paragraph (2) shall apply mutatis mutandis where the depositor or holder of a deposit receipt refuses to receive or is unable to receive the deposited goods. In this case, the holder of a pledge receipt shall have rights over the proceeds from an auction

(2) The provisions of Article 611 and Article 612 shall apply mutatis mutandis to the case referred to in the preceding paragraph.

Article 625 The provisions of Article 588 shall apply mutatis mutandis to a warehouse business operator.

Article 626 (1) The liability of a warehouse business operator arising from the loss of or damage to the deposited goods shall be extinguished by prescription when one year has elapsed from the date of the removal of the goods from the warehouse.

(2) In the event of the total loss of the deposited goods, the period set forth in the

preceding paragraph shall be counted from the day on which the warehouse business operator dispatched a notice of the loss to the holder of the deposit receipt, or if the holder of the deposit receipt is unknown, to the depositor.

(3) The provisions of the preceding two paragraphs shall not apply where the warehouse business operator has knowledge of the loss or damage.

Article 627 (1) A warehouse business operator shall, at the request of a depositor, deliver a warehouse receipt in lieu of a deposit receipt and pledge receipt.

(2) The provisions on a deposit receipt shall apply mutatis mutandis to a warehouse receipt.

Article 628 Where a pledge is created on a warehouse receipt, the depositor may, with the consent of the pledgee, demand the return of part of the deposited goods even before the due date of the claim. In this case, the warehouse business operator shall write the type, quality and quantity of the deposited goods thus returned on the warehouse receipt, and make an entry in his/her books to that effect.

## **Chapter X Insurance**

### **Section 1 Casualty Insurance**

#### **Subsection 1 General Provisions**

Article 629 Deleted

Article 630 Deleted

Article 631 Deleted

Article 632 Deleted

Article 633 Deleted

Article 634 Deleted

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**Part III Maritime Commerce**  
**Chapter I Ships and Shipowners**

Article 684 (1) The term "ship" as used in this Act means a ship to be used for a voyage for the purpose of conducting a commercial transaction.

(2) The provisions of this Part shall not apply to tender boats or other boats steered solely or mainly using oars and paddles.

Article 685 The objects listed in the equipment inventory of a ship shall be presumed to be accessories of the ship.

Article 686 (1) A shipowner shall, as provided by special laws, register his/her ship and obtain a certificate of the vessel's nationality.

(2) The provisions of the preceding paragraph shall not apply to a ship with a gross tonnage of not more than 20 tons.

Article 687 The transfer of ownership of a ship may not be duly asserted against a third party unless it is registered and stated in the certificate of the vessel's nationality.

Article 688 Where the ownership of a ship on a voyage is assigned, any profits and losses arising from the voyage shall be attributed to the assignee, unless there are any special provisions to the contrary.

Article 689 No seizure or provisional seizure (excluding provisional seizure by means of registration) may be executed on a ship for which preparations for departure have been finished; provided, however, that this shall not apply to any obligation arising from the ship due to its departure.

Article 690 A shipowner shall be liable to compensate for any damage that the captain or any other mariner of the ship has caused to others intentionally or negligently in the course of performing their duties.

Article 691 Deleted

Article 692 Deleted

Article 693 Matters concerning the use of the ship shall be determined between the co-owners of the ship by a majority of the value of the shares of the co-owners.

Article 694 The co-owners of a ship shall bear the costs for the use of the ship in proportion to the value of their respective shares.

Article 695 (1) When the co-owners of a ship have made a resolution to make a new voyage or make a major repair to the ship, any co-owner who has an objection to such resolution may demand that another co-owner(s) purchase his/her share at a reasonable price.

(2) A co-owner who intends to make a demand as set forth in the preceding paragraph shall dispatch a notice to the other co-owner(s) or the ship's husband of such intention within three days after the date of the resolution; provided, however, that in the case of a co-owner who did not participate in making the resolution, said period shall be counted from the day following the day on which he/she received notice of the resolution.

Article 696 The co-owners of a ship shall be liable to perform the obligations arising from the use of the ship in proportion to the value of their respective shares.

Article 697 Profits and losses arising from each voyage shall be distributed among the co-owners of the ship at the end of the voyage in proportion to the value of their respective shares.

Article 698 Even where the co-owners of a ship form a partnership, each co-owner may assign his/her share in whole or in part to another person without the consent of another co-owner(s); provided, however, that this shall not apply to the ship's husband.

Article 699 (1) The co-owners of a ship shall appoint the ship's husband.

(2) Consent shall be required from all the co-owners of a ship in order to appoint a person who is not a co-owner as the ship's husband.

(3) The appointment of the ship's husband and the extinction of his/her authority of representation shall be registered.

Article 700 (1) The ship's husband shall have the authority to engage in any and all judicial or extrajudicial acts on behalf of the co-owners of the ship in connection with the use of the ship, except for those listed in the following:

- (i) assigning or leasing the ship to another or mortgaging the ship;
- (ii) buying insurance for the ship;
- (iii) making a new voyage;
- (iv) making a large repair to the ship; and
- (v) borrowing money.

(2) No limitation on the authority of representation of the ship's husband may be duly asserted against a third party who has no knowledge of such limitation.

Article 701 (1) The ship's husband shall keep books and enter any and all matters concerning the use of the ship in the books.

(2) The ship's husband shall, without delay after the end of each voyage, settle the accounts of the voyage and request approval therefor from the co-owners of the ship.

Article 702 (1) When a ship loses Japanese nationality due to the transfer of the share(s) of any co-owner(s) of the ship or his/her loss of Japanese nationality, another co-owner(s) may purchase said share at a reasonable price or make a request to the court to put said share up for auction.

(2) When a ship owned by a company loses Japanese nationality due to the transfer of the share of any company member(s), other member(s) if the company is a general partnership company, or other member(s) with unlimited liability if the company is a limited partnership company, may purchase said share at a reasonable price.

Article 703 The lease of a ship, after it is registered, shall also be effective against a person who later acquires a real right on the ship.

Article 704 (1) When the lessee of a ship uses the ship for a voyage for the purpose of conducting a commercial transaction, he/she shall have the same rights and obligations as the shipowner in relation to any third party with regard to matters concerning the use of the ship.

(2) In the case referred to in the preceding paragraph, any statutory lien arising from the use of the ship shall also be effective against the shipowner; provided, however, that this shall not apply if the holder of the statutory lien knows that the use of the ship is in violation of the contract.

## **Chapter II Captain**

Article 705 (1) A captain may not be released from the liability to compensate a shipowner, a charterer, a consignor or any other interested person for damage unless he/she proves that he/she was not negligent in exercising due care in performing his/her duties.

(2) A captain may not be released from the liability prescribed in the preceding paragraph in relation to any person other than a shipowner even when he/she has followed the shipowner's instructions.

Article 706 When a mariner has caused damage to another person in the course of performing his/her duties, the captain may not be released from the liability to compensate for the damage unless he/she proves that he/she was not negligent in supervising the mariner.

Article 707 When the captain is unable to direct the ship for a compelling reason, he/she may appoint another person and have him/her perform the captain's duties, unless otherwise provided for in laws and regulations. In this case, the captain shall be responsible to the shipowner for the appointment.

Article 708 Deleted

Article 709 (1) The captain shall keep the equipment inventory and the documents concerning the transportation contract on board the ship.

(2) An Ordinance of the Ministry of Land, Infrastructure, Transport and Tourism may provide that ships that do not navigate abroad shall not be required to keep the equipment inventory set forth in the preceding paragraph.

Article 710 Deleted

Article 711 Deleted

Article 712 (1) The captain shall, while the ship is on a voyage, dispose of the shipped goods by a method which is in the best interests of the interested parties.

(2) An interested person may be released from his/her liability by abandoning the shipped goods to the creditor of a claim that has arisen with regard to the shipped goods as a result of an act of the captain; provided, however, that this shall not apply if there is negligence on the part of the interested person.

Article 713 (1) Outside the port of registry, the captain shall have the authority to engage in any and all judicial or extrajudicial acts as necessary for the

voyage.

- (2) At the port of registry, unless specially mandated, the captain shall only have the authority to hire or dismiss mariners.

Article 714 No limitation on the captain's authority of representation may be duly asserted against a third party who has no knowledge of such limitation.

Article 715 (1) The captain may not engage in any of the following acts unless he/she does so in order to pay the costs for a repair to the ship, salvage charges or any other costs necessary to continue the voyage:

- (i) mortgaging the ship;
- (ii) borrowing money; and
- (iii) selling or pledging all or part of the shipped goods, except in the case referred to in Article 712, paragraph (1).

- (2) The amount of damages payable in the case where the captain has sold or pledged the shipped goods shall be determined by the value thereof at the port of discharge as of the time when the shipped goods should have arrived at the port; provided, however, that any costs that are not required to be paid from such value shall be deducted.

Article 716 Deleted

Article 717 If the ship becomes unrepairable outside the port of registry, the captain may put it up for auction with the authorization of the maritime authorities.

Article 718 (1) A ship shall be deemed to have become unrepairable in the following cases:

- (i) where the ship is unable to be repaired at its current location and where it is unable to travel to any place where it is possible for it to be repaired; and
  - (ii) where the cost of the repair exceeds three-fourths of the value of the ship.
- (2) The value set forth in item (ii) of the preceding paragraph shall be the value as of the time of departure if the ship is damaged on a voyage, or the value as of the time before suffering the damage in other cases.

Article 719 The captain may use the shipped goods for a voyage when it is necessary in order to continue the voyage. In this case, the provisions of Article 715, paragraph (2) shall apply *mutatis mutandis*.

Article 720 (1) The captain shall report any important matters concerning a voyage to the shipowner without delay.

(2) The captain shall, without delay after the end of each voyage, settle the accounts of the voyage and request approval therefor from the shipowner, and make a report on the accounts to the shipowner at any time when requested.

Article 721 (1) A shipowner may dismiss the captain at any time; provided, however, that if the captain is dismissed without justifiable grounds, he/she may claim compensation from the shipowner for any damage arising from the dismissal.

(2) Where the captain is one of the co-owners of a ship, if he/she is dismissed against his/her will, he/she may demand that the other co-owners(s) purchase his/her share at a reasonable price.

(3) When the captain intends to make a demand as set forth in the preceding paragraph, he/she shall dispatch a notice to another co-owner(s) or the ship's husband of such intention without delay.

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### **Chapter III Transportation**

#### **Section 1 Freight Transportation**

##### **Subsection 1 General Provisions**

Article 737 When a transportation contract is entered into with regard to the whole or part of a ship, each party shall deliver a written transportation contract to the other party when requested.

Article 738 A shipowner shall warrant to a charterer or a consignor that the ship is capable of making a safe voyage as of the time of its departure.

Article 739 A shipowner may not be released from the liability of compensating for any damage arising from his/her own negligence, an intentional act or the gross negligence of a mariner or other employee or from the ship not being seaworthy, even where he/she has agreed to any special provisions to the contrary.

Article 740 (1) The captain may, at any time, discharge any freight that is shipped in violation of laws and regulations or not in accordance with the contract, and abandon such freight if it is likely to harm the ship or the shipped goods; provided, however, that if the captain transports such freight, he/she may demand the highest freight charge for the same type of freight at the place and time of the shipment.

(2) The provisions of the preceding paragraph shall not preclude the shipowner or any other interested person from claiming compensation for any damage.

Article 741 (1) Where a transportation contract is entered into with regard to the whole of a ship, and when the preparations necessary for shipping the freight have been made, the shipowner shall dispatch a notice to the charterer to that effect without delay.

(2) Where the period during which a charterer should ship the freight is specified, such period shall be counted from the day following the day on which the notice set forth in the preceding paragraph is dispatched. If the freight is shipped after the expiration of said period, the shipowner may claim a reasonable remuneration even where there are no special provisions to that effect.

(3) The period set forth in the preceding paragraph shall not include the days during which shipment is impossible due to force majeure.

Article 742 Where the captain is to receive the freight from a third party, if the identity of such party cannot be ascertained or said party does not ship the freight, the captain shall immediately dispatch a notice to the charterer to that effect. In this case, the charterer may ship the freight only within the period for shipment.

Article 743 (1) A charterer may make a request for departure to the captain even when he/she does not ship the whole of the freight.

(2) When the charterer makes a request as set forth in the preceding paragraph, he/she shall pay the full amount of the freight charge and any costs arising from the fact that he/she does not ship the freight in whole, and shall also provide reasonable security when requested to do so by the shipowner.

Article 744 (1) After the passage of the period for shipment, the captain may immediately depart even if the charterer has not shipped all of the freight.

(2) The provisions of paragraph (2) of the preceding Article shall apply mutatis mutandis to the case referred to in the preceding paragraph.

Article 745 (1) Before departure, the charterer may cancel the contract by paying half of the freight charge.

(2) In the case of a round trip voyage, if the charterer cancels the contract before the departure of the return voyage, he/she shall pay two-thirds of the freight charge. The same shall apply in the case of a voyage to the port of shipment from another port, where the charterer cancels the contract before the ship departs from the port of shipment.

(3) If the charterer cancels the contract pursuant to the provisions of the preceding two paragraphs after the freight is shipped in whole or in part, he/she shall bear the costs for the shipment and discharge of the freight.

(4) If the charterer has not shipped the freight during the period for shipment, he/she shall be deemed to have canceled the contract.

Article 746 (1) Even when the charterer cancels the contract pursuant to the provisions of the preceding Article, he/she may not be released from the liability to pay any ancillary costs and any payments made by another person on his/her behalf.

(2) In the case referred to in paragraph (2) of the preceding Article, the charterer shall pay the amount that he/she should bear for a general average or salvage in proportion to the value of the freight, in addition to any ancillary costs and payments listed in the preceding paragraph.



Article 747 After departure, the charterer may not cancel the contract unless he/she pays the debts prescribed in Article 753, paragraph (1) in addition to the full amount of the freight charge, and also compensates for any damage that may arise from the discharge or provides reasonable security.

Article 748 (1) Where a transportation contract is entered into with regard to part of a ship, if a charterer cancels the contract before departure independently from other charterer(s) and consignor(s), he/she shall pay the full amount of the freight charge; provided, however, that any freight charge that the shipowner receives from other freight shall be deducted.

(2) Even before departure, if a charterer has already shipped the freight in whole or in part, he/she may not cancel the contract unless he/she obtains consent from the other charterer(s) and consignor(s).

(3) The provisions of the preceding seven Articles shall apply *mutatis mutandis* where the transportation contract is entered into with regard to part of a ship.

Article 749 (1) Where a transportation contract is entered into with regard to individual freight items, the consignor shall ship the freight according to the captain's instructions without delay.

(2) If the consignor fails to ship any freight, the captain may depart immediately. In this case, the consignor shall pay the full amount of the freight charge; provided, however, that any freight charge that the shipowner receives from other freight shall be deducted.

Article 750 The provisions of Article 748 shall apply *mutatis mutandis* where the consignor cancels the contract.

Article 751 The charterer or the consignor shall deliver the documents necessary for transportation to the captain within the period for shipment.

Article 752 (1) Where a transportation contract is entered into with regard to the whole or part of a ship, when the preparations necessary for discharging the freight have been made, the captain shall dispatch a notice to the consignee to that effect without delay.

(2) Where the period during which the freight should be discharged is specified, such period shall be counted from the day following the day on which the notice set forth in the preceding paragraph is dispatched. If the freight is discharged after the expiration of said period, the shipowner may claim a reasonable remuneration even where there are no special provisions to that effect.

(3) The period set forth in the preceding paragraph shall not include the days during which the discharge is impossible due to *force majeure*.

(4) Where a transportation contract is entered into with regard to individual freight items, the consignee shall discharge the freight according to the captain's instructions without delay.

Article 753 (1) When the consignee receives the freight, he/she shall be obliged to pay, in accordance with the purport of the transportation contract or bill of lading, the freight charge, any ancillary costs, payment made on his/her behalf by another person, the anchorage, and the amount that he/she should bear for a general average or salvage in proportion to the value of the freight.

(2) The captain shall not be required to deliver the freight unless it is in exchange for payment of the amount prescribed in the preceding paragraph.

Article 754 (1) If the consignee fails to receive the freight, the captain may deposit the freight. In this case, the captain shall dispatch a notice to the consignee to that effect without delay.

(2) Where the identity of the consignee cannot be ascertained or the consignee refuses to receive the freight, the captain shall deposit the freight. In this case, the captain shall dispatch a notice of such fact to the charterer or the consignor without delay.

Article 755 Where the freight charge is rated on the basis of the weight or capacity of the freight, the amount thereof shall be determined by the weight or capacity of the freight as of the time of the delivery.

Article 756 Where the freight charge is rated on the basis of a period of time, the amount thereof shall be determined by the period from the date of the start of the shipment of the freight until the date of the completion of the discharge of the freight; provided, however, that if it is necessary to have the ship berth in the port of departure or in any port during the voyage due to force majeure, or if it is necessary to make a repair to the ship during the voyage, said period shall not include the period of such berthing or repair. In the cases referred to in Article 741, paragraph (2) or Article 752, paragraph (2), said period shall not include the number of days which it took to ship or discharge the freight after the period for shipment or the discharge period had expired.

Article 757 (1) A shipowner may put the freight up for auction with the permission of the court in order to receive payment of the amount prescribed in Article 753, paragraph (1).

(2) The case pertaining to the permission set forth in the preceding paragraph shall be subject to the jurisdiction of the district court having jurisdiction over the location of the freight set forth in said paragraph.

(3) Even after the captain has delivered the freight to the consignee, the shipowner may exercise his/her right over the freight; provided, however, that this shall not apply when two weeks have elapsed from the date of the delivery or when any third party has taken possession of the freight.

Article 758 If a shipowner does not exercise the right prescribed in the preceding Article, he/she shall lose his/her claim against a charterer or a consignor; provided, however, that the charterer or the consignor shall make a reimbursement to the extent that he/she has been enriched.

Article 759 Where a transportation contract is entered into with regard to the whole or part of a ship, if the charterer also enters into another transportation contract with a third party, only the shipowner shall be liable to perform the obligation under the latter contract to such third party to the extent that the performance of the obligation falls within the scope of the captain's duties.

Article 760 (1) Where a transportation contract is entered into with regard to the whole of a ship, the contract shall be terminated when any of the following events occurred:

- (i) the ship sank;
- (ii) the ship became unrepairable;
- (iii) the ship was captured; or
- (iv) the freight was lost due to force majeure.

(2) If any of the events listed in item (i) to item (iii) of the preceding paragraph occurred during a voyage, the charterer shall pay the freight charge in proportion to the transportation, to the extent that such payment does not exceed the value of the freight.

Article 761 (1) When a voyage or transportation is no longer in compliance with laws and regulations or it becomes otherwise impossible to accomplish the purpose of a contract due to force majeure, the parties may cancel the contract.

(2) Where any of the events listed in the preceding paragraph occur after departure, when the contract is cancelled, the charterer shall pay the freight charge in proportion to the transportation.

Article 762 (1) When any of the events listed in Article 760, paragraph (1), item (iv), or paragraph (1) of the preceding Article occur with regard to any portion of the freight, the charterer may ship other freight to the extent that such shipment will not increase the burden of the shipowner.

(2) When the charterer intends to exercise the right prescribed in the preceding paragraph, he/she shall discharge or ship the freight without delay, and if

he/she fails to perform the discharge or shipment, he/she shall pay the full amount of the freight charge.

Article 763 (1) The provisions of Article 760 and Article 761 shall apply mutatis mutandis where a transportation contract is entered into with regard to part of a ship or individual freight items.

(2) Even when any of the events listed in Article 760, paragraph (1), item (iv) or Article 761, paragraph (1) occurred with regard to any freight item, the charterer or consignor may cancel the contract; provided, however, that they shall pay the full amount of the freight charge.

Article 764 A shipowner may claim the full amount of the freight charge in the following cases:

- (i) where the captain has sold or pledged the shipped goods pursuant to the provisions of Article 715, paragraph (1);
- (ii) where the captain has used the shipped goods for the voyage pursuant to the provisions of Article 719; and
- (iii) where the captain has disposed of the shipped goods pursuant to the provisions of Article 788.

Article 765 Any claim held by a shipowner against a charterer, a consignor or a consignee shall be extinguished by prescription when one year has elapsed.

Article 766 The provisions of Article 566, Article 576 to Article 581, and Article 588 shall apply mutatis mutandis to a shipowner.

### **Subsection 2 Bill of Lading**

Article 767 The captain shall, at the request of a charterer or a consignor, deliver one or more bills of lading without delay after the shipment of the freight.

Article 768 A shipowner may entrust any person other than the captain to deliver a bill of lading on behalf of the captain.

Article 769 A bill of lading shall state the following matters and bear the signature of the captain or any person who acts on his/her behalf:

- (i) the name and nationality of the ship;
- (ii) if the captain is not the person who issues the bill of lading, the name of the captain;
- (iii) the type, weight or capacity of the freight, the type of packaging, the

- number of packages, and the marks;
- (iv) the name or trade name of the charterer or the consignor;
- (v) the name or trade name of the consignee;
- (vi) the port of shipment;
- (vii) the port of discharge, or if the charterer or the consignor is to designate the port of discharge after departure, such designated port;
- (viii) the freight charge;
- (ix) if more than one bill of lading is issued, the number of the bills of lading;
- and
- (x) the place and date of the issuance of the bill(s) of lading.

Article 770 A charterer or a consignor shall, at the request of the captain or the person acting on behalf of the captain, sign a copy of a bill of lading and deliver the signed copy to the captain or said person.

Article 771 At the port of discharge, the captain may not refuse to deliver the freight even when only one of the holders of bills of lading demands the delivery.

Article 772 Outside the port of discharge, the captain may not deliver the freight unless he/she receives each bill of lading returned thereto.

Article 773 When two or more holders of bills of lading demand the delivery of the freight, the captain shall deposit the freight without delay and dispatch a notice of such fact to each holder. Where the captain has delivered any portion of the freight pursuant to the provisions of Article 771 to one of such holders and then another holder demands the delivery of the freight, the captain shall also deposit the remaining portion of the freight and dispatch a notice.

Article 774 Where there are two or more holders of bills of lading, if one of such holders has received the delivery of the freight from the captain prior to other holders, the bills of lading held by such other holders shall cease to be effective.

Article 775 Where there are two or more holders of bills of lading, if the captain delivers the freight to none of those holders, the one who holds the first bill that was dispatched or delivered by the original holder shall exercise his/her right prior to the other holders.

Article 776 The provisions of Article 572 to Article 575, and Article 584 shall apply mutatis mutandis to a bill of lading.

## Section 2 Passenger Transportation

Article 777 A registered boarding ticket may not be assigned to others.

Article 778 A shipowner shall pay for food for the passengers during a voyage.

Article 779 A shipowner may not claim any additional freight charge for the baggage that passengers may carry on board the ship under the contract, unless there are any special provisions to the contrary.

Article 780 If a passenger does not board a ship by the boarding time, the captain may depart or continue the voyage without such passenger. In this case, such passenger shall pay the full amount of the freight charge.

Article 781 (1) Before departure, a passenger may cancel the contract by paying half the amount of the freight charge.

(2) After departure, no passenger may cancel the contract unless he/she pays the full amount of the freight charge.

Article 782 (1) If a passenger becomes unable to make a voyage due to death, injury, illness or any other event of force majeure, a shipowner may claim one-fourth of the amount of the freight charge.

(2) If any of the events listed in the preceding paragraph occurred after departure, a shipowner may, at his/her own discretion, claim one-fourth of the amount of the freight charge or claim the freight charge in proportion to the transportation.

Article 783 When it is necessary to make a repair to a ship during a voyage, a shipowner shall provide passengers with reasonable accommodation and food while the repair is being made; provided, however, that this shall not apply if the shipowner provides passengers with another ship to transport them to the port of landing to the extent that such transportation does not infringe their rights.

Article 784 A passenger transportation contract shall be terminated on the occurrence of any of the events listed in Article 760, paragraph (1), item (i) to item (iii). If such event occurred during the voyage, passengers shall pay the freight charge in proportion to the transportation.

Article 785 In the event of the death of a passenger, the captain shall dispose of the passenger's baggage which is on board the ship by a method which is in the

best interests of his/her heir(s).

Article 786 (1) The provisions of Article 590, Article 591, paragraph (1), Article 592, Article 738, Article 739, Article 761, and Article 765 shall apply mutatis mutandis to the transportation of passengers by sea.

(2) The provisions of Article 740 and Article 764 shall apply mutatis mutandis to the baggage of passengers.

Article 787 Where a transportation contract is entered into with regard to the whole or part of a ship for the purpose of providing passenger transportation, the provisions of Subsection 1 of the preceding Section shall apply mutatis mutandis to the relationship between a shipowner and a charterer.

#### **Chapter IV Average**

Article 788 (1) Any damage and costs which arise from any disposition of the ship or the shipped goods performed by the captain for the purpose of ensuring that the ship or the shipped goods are immune from any common risk shall constitute a general average.

(2) The provisions of the preceding paragraph shall not preclude, in the case of a risk caused by another person's negligence, any interested person from claiming a remedy against the person responsible for such negligence.

Article 789 The general average shall be shared among the interested persons in accordance with the ratio between the value of the ship or the shipped goods that have been successfully preserved therefrom, half the amount of the freight charges, and the amount of damage to be treated as the general average.

Article 790 When determining the amount of the general average contribution, the value of the ship shall be the price thereof at the place and time of its arrival, and the value of the shipped goods shall be the value thereof at the place and time of their discharge; provided, however, that with regard to the value of the shipped goods, any freight charges and other costs that are not required to be paid in the event of the loss of the shipped goods shall be deducted from said value.

Article 791 The persons who are to share a general average pursuant to the provisions of the preceding two Articles shall be liable to share it only up to the value which actually exists at the time of the arrival of the ship or the delivery of the shipped goods.

Article 792 The value of any weapons, salaries for the mariners, and food and clothing for the mariners and passengers that are kept on a ship shall not be included in the amount of a general average to be shared; provided, however, that any damage caused by any interested person to any of those items shall be borne by other interested persons.

Article 793 (1) Interested persons shall not be required to share the liability for any damage caused to any goods shipped without a bill of lading or any other document by which the value of the goods can be estimated, or to any equipment not recorded in the equipment inventory.

(2) The provisions of the preceding paragraph shall also apply to any damage caused to any goods placed on the deck; provided, however, that this shall not apply in the case of a short voyage on a coastal route.

(3) Even the persons interested in the goods as listed in the preceding two paragraphs may not be released from the liability of sharing a general average.

Article 794 (1) The amount of damages to be treated as a general average shall be determined on the basis of the value of the ship at the place and time of its arrival or the value of the shipped goods at the place and time of their discharge; provided, however, that with regard to the value of the shipped goods, any and all costs that are not required to be paid in the event of the loss of or damage to the shipped goods shall be deducted.

(2) The provisions of Article 578 shall apply mutatis mutandis to a general average.

Article 795 (1) Where the value of the shipped goods indicated in a bill of lading or any other document by which the value of the shipped goods can be estimated is lower than the real value of the shipped goods, the amount of damages caused to the shipped goods shall be determined on the basis of such value as indicated in the bill or document.

(2) Where the value of the shipped goods indicated in the bill or document is higher than the real value of the shipped goods, the persons interested in the shipped goods shall share a general average in proportion to such value as indicated in the bill or document.

(3) The provisions of the preceding two paragraphs shall apply mutatis mutandis where any false statement is made with regard to the matters that may affect the value of the shipped goods.

Article 796 Where the interested persons shared a general average pursuant to the provisions of Article 789, and then the whole or part of the ship, its equipment or the shipped goods are returned to the owner(s), such owner(s)



shall return the compensation, after deducting therefrom the amount of the salvage charge and the amount of damages arising from the partial loss of or damage to such property.

Article 797 Where two ships have collided with each other due to the negligence of the mariners of both ships, if it is impossible to determine which ship was more seriously negligent, both shipowners shall bear the damage arising from the collision equally.

Article 798 (1) Any claim arising from a general average or the collision of ships shall be extinguished by prescription when one year has elapsed.

(2) In the case of a general average, the period set forth in the preceding paragraph shall be counted from the time of the complete settlement of the account.

Article 799 The provisions of this Chapter shall apply *mutatis mutandis* to the costs required to have a ship berth in the port of departure or in any other port during a voyage due to force majeure.

## **Chapter V Salvage**

Article 800 Where the whole or part of a ship or the shipped goods were involved in a marine accident, a person who has salvaged the same without being obliged do so may claim a reasonable salvage charge corresponding to the consequence of the salvage.

Article 801 Where there are no special provisions on the salvage charge, if a dispute occurs over the amount thereof, the court shall determine the amount while taking into consideration the degree of risk, the consequence of the salvage, the labor and costs incurred for the salvage and any other circumstances concerned.

Article 802 Where the salvage charge for a marine accident is specified by a contract, if the amount thereof is significantly unreasonable, a party to the contract may demand an increase or decrease of the amount. In this case, the provisions of the preceding Article shall apply *mutatis mutandis*.

Article 803 (1) The amount of the salvage charge may not exceed the value of the property that has been salvaged, if there are no special provisions to the contrary.

(2) If there is any statutory lien with a prior rank, the amount of the salvage

charge may not exceed the amount that remains after deducting the amount of the claim held by the holder of the statutory lien from the value of the salvaged property.

Article 804 (1) Where two or more persons are engaged in the salvage, the provisions of Article 801 shall apply *mutatis mutandis* with regard to the ratio of the distribution of the salvage charge.

(2) Any person who engaged in the rescue of human life may also receive a distribution of the salvage charge pursuant to the provisions of the preceding paragraph.

Article 805 (1) The shipowner of a ship that engaged in the salvage shall be paid two-thirds of the salvage charge if the ship is a steamship, or half of the salvage charge if the ship is a sailing ship, and the remaining amount shall be divided into halves, of which one half is to be paid to the captain and the other to the mariners.

(2) The amount to be paid to the mariners pursuant to the provisions of the preceding paragraph shall be distributed to them by the captain. In this case, the provisions of the preceding Article shall apply *mutatis mutandis*.

(3) Any contract that is incompatible with the provisions of the preceding two paragraphs shall be void.

Article 806 In order for the captain to distribute the salvage charge pursuant to the provisions of paragraph (2) of the preceding Article, he/she shall prepare a distribution plan and publicize it among the mariners by the end of the voyage.

Article 807 (1) When a mariner intends to make an objection to the distribution plan set forth in the preceding Article, he/she may make such objection to the maritime authorities of the first port where he/she is able to make an objection after the plan has been publicized.

(2) When the maritime authorities find an objection to be well-grounded, they may correct the distribution plan.

(3) The captain may not pay the salvage charge until the objection is settled.

Article 808 (1) If the captain fails to prepare a distribution plan, the maritime authorities may, at the request of a mariner, order the captain to prepare a distribution plan.

(2) When the captain disobeys the order set forth in the preceding paragraph, the maritime authorities may prepare a distribution plan.

Article 809 A salvager may not claim the salvage charge in the following cases:

- (i) where he/she provoked the marine accident intentionally or negligently;
- (ii) where he/she engaged in the salvage despite the fact that his/her engagement was refused on justifiable grounds; and
- (iii) where he/she concealed salvaged property or disposed of it without good reason.

Article 810 (1) A salvager shall have a statutory lien over shipped goods that are salvaged, based on his/her claim.

(2) The provisions on a statutory lien held by a ship's creditor shall apply mutatis mutandis to the statutory lien set forth in the preceding paragraph.

Article 811 (1) The captain shall have the authority to engage in any and all judicial or extrajudicial acts on behalf of the debtor of the salvage charge in connection with the payment thereof.

(2) In an action relating to the salvage charge, the captain may stand as a plaintiff or defendant; provided, however, that a judgment rendered in such an action shall also be effective against the debtor of the salvage charge.

Article 812 The owner of the shipped goods shall be liable to pay the salvage charge for the salvaged property.

Article 813 A statutory lien which exists over shipped goods may not be exercised after the debtor has delivered them to a third party acquirer.

Article 814 Any claim for the salvage charge shall be extinguished by prescription when one year has elapsed from the time of the salvage.

## **Chapter VI Insurance**

Article 815 (1) A marine insurance contract shall be entered into to compensate for any damage that may arise from an accident relating to a voyage.

(2) Unless otherwise provided for in this Chapter, the provisions of Chapter II, Section 1 to 4 and 6, and Chapter V of the Insurance Act (Act No. 56 of 2008) shall apply to marine insurance contracts.

Article 816 Unless otherwise provided for in this Chapter or in an insurance contract, an insurer shall be liable to compensate for any and all damage arising from accidents relating to a voyage that occurred to the insured property during the insurance period.

Article 817 An insurer shall be liable to compensate for a general average

contribution payable by an insured; provided, however, that if the insurance value is partially covered by insurance, the insurer's liability shall be determined on the basis of the ratio of the insured amount to the insurance value.

Article 818 In the case of insurance for a ship, the value of the ship as of the time that the insurer's liability commences shall be the insurance value.

Article 819 In the case of insurance for the shipped goods, the sum of the value of the shipped goods at the place and time of the shipment and the costs of the shipment and insurance shall be the insurance value.

Article 820 In the case of insurance for any profit or remuneration to be gained upon the arrival of the shipped goods, if the insurance value is not specified by a contract, the insured amount shall be presumed to be the insurance value.

Article 821 (1) Where a ship is covered by insurance for one voyage, the insurer's liability shall commence at the time that the shipment of goods or ballast starts.

(2) Where a ship is covered by insurance after the shipment of goods or ballast, the insurer's liability shall commence at the time of the formation of the contract.

(3) In the cases referred to in the preceding two paragraphs, the insurer's liability shall terminate at the time when the discharge of goods or ballast is completed at the port of arrival; provided, however, that if there is any delay in the discharge due to reasons other than force majeure, the insurer's liability shall terminate at the time when the discharge should have been completed.

Article 822 (1) Where the shipped goods are covered by insurance or any profit or remuneration to be gained upon the arrival of the shipped goods is covered by insurance, the insurer's liability shall commence at the time when the shipped goods leave land and terminate at the time when the discharge thereof is completed at the port of discharge.

(2) The provisions of the proviso to paragraph (3) of the preceding Article shall apply *mutatis mutandis* in the case referred to in the preceding paragraph.

Article 823 A marine insurance policy shall state the following matters in addition to the matters listed in Article 6, paragraph (1) of the Insurance Act:

(i) in the case of insurance for a ship, the name, nationality and type of the ship, the name of the captain and the names of the port of departure, the port of arrival or the port(s) of call if such port(s) is designated; and

(ii) in the case of insurance for the shipped goods or any profit or remuneration to be acquired upon the arrival of the shipped goods, the name, nationality and type of the ship, the port of shipment and the port of discharge.

Article 824 (1) If there is a change to a voyage before the insurer's liability commences, the insurance contract shall cease to be effective.

(2) If there is a change to a voyage after the insurer's liability commences, the insurer shall not be liable for any accident that may occur after such change; provided, however, that this shall not apply if the change was due to reasons not attributable to the policyholder or the insured.

(3) When the port of arrival has been changed and the operation for making the change has been started, it shall be deemed that the voyage has been changed even where the ship does not deviate from the insured route.

Article 825 If an insured fails to have the ship depart or continue a voyage, or changes the route or otherwise changes or increases the risk, an insurer shall not be liable for any accident that may occur after such change or increase; provided, however, that this shall not apply where the change or increase has no influence on the occurrence of an accident or has been caused due to force majeure attributable to the insurer or on justifiable grounds.

Article 826 Even where the captain is designated by an insurance contract, the replacement of the captain shall have no influence on the effect of the contract.

Article 827 Where the shipped goods are covered by insurance or any profit or remuneration to be gained upon the arrival of the shipped goods is covered by insurance, when the ship is changed, the insurer shall not be liable for any accident that may occur after such change; provided, however, that this shall not apply if the change was due to reasons not attributable to the policyholder or the insured.

Article 828 (1) Where an insurance contract is entered into without designating a ship to be loaded with goods, when the policyholder or the insured becomes aware that the goods have been shipped, he/she shall dispatch a notice to the insurer of the name and nationality of the ship without delay.

(2) If the policyholder or the insured fails to dispatch a notice as set forth in the preceding paragraph, the insurance contract shall cease to be effective.

Article 829 An insurer shall not be liable to compensate for the damage or costs listed in the following:

(i) any damage arising from the nature of or any defect to the insured property

or its ordinary wear and tear, or an intentional act or the gross negligence of the policyholder or the insured;

- (ii) in the case of insurance for a ship or the freight charge, any damage arising from the failure to make the necessary preparations or keep the necessary documents for a safe voyage at the time of departure;
- (iii) in the case of insurance for the shipped goods or profit or remuneration to be gained upon the arrival of the shipped goods, any damage arising from an intentional act or the gross negligence of the charterer, the consignor, or the consignee; and
- (iv) the pilotage charges, harbor charges, light dues, quarantine fees, and other ordinary costs insured in connection with the ship or the shipped goods for the voyage.

Article 830 (1) When the amount of the damage or costs that are not treated as a general average does not exceed two percent of the insurance value with the costs for the calculation of the amount excluded, the insurer shall not be liable to compensate for such damage or costs.

- (2) When the amount of the damage or costs set forth in the preceding paragraph exceeds two percent of the insurance value, the insurer shall be liable to pay the full amount.
- (3) The provisions of the preceding two paragraphs shall apply *mutatis mutandis* where the parties have specified, in the contract, the percentage of the damage or costs that shall not be borne by the insurer.
- (4) The percentages prescribed in the preceding three paragraphs shall be calculated for each voyage.

Article 831 When shipped goods covered by insurance arrive at the port of discharge in a damaged state, the insurer shall be liable to compensate for part of the insurance value on the basis of the ratio of the value of the shipped goods in such damaged state to the value that the shipped goods would have had in an undamaged state.

Article 832 (1) When shipped goods covered by insurance have been sold due to force majeure during a voyage, the insurer shall be liable to pay any difference between the amount calculated by deducting the freight charge and other costs from the sales proceeds and the insurance value; provided, however, that this shall not preclude the application of Article 19 of the Insurance Act in cases where the insurance value is partially covered by insurance.

- (2) In the case referred to in the preceding paragraph, if the buyer does not pay the sales proceeds, the insurer shall pay such sales proceeds; provided, however, that when the insurer has made the payment, he/she shall acquire

the rights held by the insured in relation to the buyer.

Article 833 The insured may claim the whole of the insured amount by abandoning the insured property to the insurer in the following cases:

- (i) where the ship sinks;
- (ii) where the ship goes missing;
- (iii) where the ship is rendered unrepairable;
- (iv) where the ship or the shipped goods were captured; and
- (v) where the ship or the shipped goods were seized by an official disposition and remained unreleased for six months.

Article 834 (1) If it is not known for six months whether a ship is still in existence, it shall be deemed that the ship has gone missing.

(2) Where a period of insurance is specified, even when such period expires within the period set forth in the preceding paragraph, the insured may declare abandonment; provided, however, that if it is proved that the ship was lost within the period of insurance, such abandonment shall be void.

Article 835 In the case referred to in Article 833, item (iii), when the captain continues the transportation of the shipped goods using another ship, the insured may not abandon the shipped goods.

Article 836 (1) When the insured intends to declare abandonment, he/she shall dispatch a notice of such intention to the insurer within three months.

(2) In the cases referred to in Article 833, item (i), item (iii) and item (iv), the period set forth in the preceding paragraph shall be counted from the time when the insured becomes aware of such cases.

(3) In the case of reinsurance, the period set forth in paragraph (1) shall be counted from the time when the reinsured receives a notice of abandonment from his/her insured.

Article 837 (1) Abandonment shall be declared by a simple method.

(2) Abandonment shall be declared with regard to the whole of the insured property; provided, however, that if the cause of the abandonment applies to only part of the insured property, abandonment may be declared only with regard to such part.

(3) Where the insurance value is partially covered by insurance, abandonment may be declared on the basis of the ratio of the insured amount to the insurance value.

Article 838 When the insurer approves abandonment, he/she may not make any

objection to the abandonment later.

Article 839 (1) The insurer shall, by abandonment, acquire any and all rights that the insured holds in connection with the insured property.

(2) When the insured has declared abandonment, he/she shall deliver the instruments concerning the insured property to the insurer.

Article 840 (1) When declaring abandonment, the insured shall give notice to the insurer with regard to whether or not there is any other insurance contract for the insured property and any obligation assumed by the insured, as well as the type of such contract and obligation.

(2) The insurer shall not be required to pay the insured amount until he/she receives notice as set forth in the preceding paragraph.

(3) Where a period for payment of the insured amount is specified, such period shall be counted from the time when the insurer receives notice as set forth in paragraph (1).

Article 841 When the insurer does not approve abandonment, the insured may not claim payment of the insured amount until after he/she proves the cause of the abandonment.

Article 841-2 The provisions of this Chapter shall apply *mutatis mutandis* to mutual insurance; provided, however, that this shall not apply if the nature thereof does not permit the application.

## **Chapter VII Ship's Creditors**

Article 842 A person who holds any of the following claims shall have a statutory lien over the ship, its equipment and the freight charge yet to be received:

(i) the costs for an auction of the ship and its equipment, as well as the costs for the storage of the same after the commencement of the auction procedure;

(ii) the costs for the storage of the ship and its equipment incurred at the last port;

(iii) the taxes imposed on the ship in connection with the voyage;

(iv) the pilotage charge and towage charge;

(v) the salvage charge and the general average to be borne by the ship;

(vi) any claims which arise from the necessity of continuing the voyage;

(vii) any claims of the captain and other mariners which arise from employment contracts; and

(viii) in the case where the ship has not made any voyage after it was sold or manufactured, any claims which arise from the sale or manufacture and the



outfitting of the ship, and any claims which arise from the outfitting of the ship, food and fuel that are required for its last voyage.

Article 843 A statutory lien held by a ship's creditor shall exist only over the freight charge for the voyage in which the statutory lien arose.

Article 844 (1) Where statutory liens held by a ship's creditors conflict with each other, the order of priority of those liens shall follow the order set forth in Article 842; provided, however, that between the claims listed in item (iv) to item (vi) of said Article, the one which arose later shall take precedence over the one which arose earlier.

(2) Where two or more persons hold statutory liens of the same rank, they shall receive payment in proportion to the value of their claims; provided, however, that where the claims listed in Article 842, item (iv) to item (vi) arose at different times, the one which arose later shall take precedence over the one which arose earlier.

(3) Where statutory liens arose from two or more voyages, notwithstanding the provisions of the preceding two paragraphs, the one which arose from a later voyage shall take precedence over the one which arose from an earlier voyage.

Article 845 Where a statutory lien held by a ship's creditor and any other statutory lien conflict with each other, the statutory lien held by the ship's creditor shall take precedence over such other statutory lien.

Article 846 (1) Where a shipowner has assigned his/her ship, the assignee shall, after registering the assignment, give public notice to the holders of statutory liens to the effect that they should file proof of their claims within a certain period of time; provided, however, that such period may not be shorter than one month.

(2) If a holder of a statutory lien does not file proof of his/her claim within the period set forth in the preceding paragraph, the statutory lien shall be extinguished.

Article 847 (1) A statutory lien held by a ship's creditor shall be extinguished when one year has elapsed after it arose.

(2) A statutory lien set forth in Article 842, item (viii) shall be extinguished by reason of the departure of the ship.

Article 848 (1) A registered ship may be the subject matter of a mortgage.

(2) A mortgage on a ship shall extend to its equipment.

(3) The provisions on a mortgage on real property shall apply mutatis mutandis

to a mortgage on a ship. In this case, the phrase "[if the obligee] does not file a petition for auction by executing the mortgage [within two months after receipt of the documents listed in each item of the preceding article]" in Article 384, item (i) of the Civil Code shall be deemed to be replaced with "[if the obligee] does not file a petition for auction by executing the mortgage or give notice to the third party acquirer to the effect that he/she has not approved the third party acquirer's offer [within two months after receipt of the documents listed in each item of the preceding article], or if the obligee who has given such notice does not file a petition for auction by executing the mortgage within one week after he/she is able to file it."

Article 849 A statutory lien over a ship may be exercised prior to a mortgage.

Article 850 A registered ship may be the subject matter of a pledge.

Article 851 The provisions of this Chapter shall apply mutatis mutandis to a ship under construction.