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**Federal Act  
on the Amendment of the Swiss Civil Code  
(Part Five: The Code of Obligations)**

of 30 March 1911 (Status as of 1 November 2019)

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*The Federal Assembly of the Swiss Confederation,*

having considered the Dispatches of the Federal Council dated 3 March 1905 and 1 June 1909<sup>1</sup>

*decrees:*

**Division One: General Provisions**

**Title One: Creation of Obligations**

**Section One: Obligations arising by Contract**

**Art. 1**

- |   |   |
|---|---|
| <p>A. Conclusion of the contract<br/>I. Mutual expression of intent<br/>1. In general</p> | <p><sup>1</sup> The conclusion of a contract requires a mutual expression of intent by the parties.</p> <p><sup>2</sup> The expression of intent may be express or implied.</p> |
|---|---|

**Art. 2**

- |                           |  |
|---------------------------|--|
| <p>2. Secondary terms</p> | <p><sup>1</sup> Where the parties have agreed on all the essential terms, it is presumed that the contract will be binding notwithstanding any reservation on secondary terms.</p> <p><sup>2</sup> In the event of failure to reach agreement on such secondary terms, the court must determine them with due regard to the nature of the transaction.</p> <p><sup>3</sup> The foregoing is subject to the provisions governing the form of contracts.</p> |
|---------------------------|--|

AS 27 317 and BS 2 199

<sup>1</sup> BBI 1905 II 1, 1909 III 747, 1911 I 695

II. Offer and acceptance  
1. Offer subject to time limit

### Art. 3

<sup>1</sup> A person who offers to enter into a contract with another person and sets a time limit for acceptance is bound by his offer until the time limit expires.

<sup>2</sup> He is no longer bound if no acceptance has reached him on expiry of the time limit.

2. Offer without time limit  
a. In the parties' presence

### Art. 4

<sup>1</sup> Where an offer is made in the offeree's presence and no time limit for acceptance is set, it is no longer binding on the offeror unless the offeree accepts it immediately.

<sup>2</sup> Contracts concluded by telephone are deemed to have been concluded in the parties' presence where they or their agents communicated in person.

b. In the parties' absence

### Art. 5

<sup>1</sup> Where an offer is made in the offeree's absence and no time limit for acceptance is set, it remains binding on the offeror until such time as he might expect a reply sent duly and promptly to reach him.

<sup>2</sup> He may assume that his offer has been promptly received.

<sup>3</sup> Where an acceptance sent duly and promptly is late in reaching the offeror and he does not wish to be bound by his offer, he must immediately inform the offeree.

3. Implied acceptance

### Art. 6

Where the particular nature of the transaction or the circumstances are such that express acceptance cannot reasonably be expected, the contract is deemed to have been concluded if the offer is not rejected within a reasonable time.

3a. Unsolicited goods

### Art. 6<sup>a2</sup>

<sup>1</sup> The sending of unsolicited goods does not constitute an offer.

<sup>2</sup> The recipient is not obliged to return or keep such goods.

<sup>3</sup> Where unsolicited goods have obviously been sent in error, the recipient must inform the sender.

<sup>2</sup> Inserted by No I of the FA of 5 Oct. 1990, in force since 1 July 1991 (AS 1991 846; BBl 1986 II 354).

**Art. 7**

4. Non-binding offer, announcement of prices, display

1 An offeror is not bound by his offer if he has made express declaration to that effect or such a reservation arises from the circumstances or from the particular nature of the transaction.

2 The sending of tariffs, price lists and the like does not constitute an offer.

3 By contrast, the display of merchandise with an indication of its price does generally constitute an offer.

**Art. 8**

5. Publicly promised remuneration

1 A person who publicly promises remuneration or a reward in exchange for the performance of an act must pay in accordance with his promise.

2 If he withdraws his promise before performance has been made, he must reimburse any person incurring expenditure in good faith on account of the promise up to the maximum amount promised unless he can prove that such person could not have provided the performance in question.

**Art. 9**

6. Withdrawal of offer and acceptance

1 An offer is deemed not to have been made if its withdrawal reaches the offeree before or at the same time as the offer itself or, where it arrives subsequently, if it is communicated to the offeree before he becomes aware of the offer.

2 The same applies to a withdrawal of an acceptance.

**Art. 10**

III. Entry into effect of a contract concluded in the parties' absence

1 A contract concluded in the parties' absence takes effect from the time acceptance is sent.

2 Where express acceptance is not required, the contract takes effect from the time the offer is received.

**Art. 11**

B. Form of contracts  
I. Formal requirements and significance in general

1 The validity of a contract is not subject to compliance with any particular form unless a particular form is prescribed by law.

2 In the absence of any provision to the contrary on the significance and effect of formal requirements prescribed by law, the contract is valid only if such requirements are satisfied.

**Art. 12**

- II. Written form  
 1. Form required by law  
 a. Scope

Where the law requires that a contract be done in writing, the requirement also applies to any amendment to the contract with the exception of supplementary collateral clauses that do not conflict with the original document.

**Art. 13**

- b. Effect

<sup>1</sup> A contract required by law to be in writing must be signed by all persons on whom it imposes obligations.

<sup>2</sup> ...<sup>3</sup>

**Art. 14**

- c. Signature

<sup>1</sup> Signatures must be appended by hand by the parties to the contract.

<sup>2</sup> A signature reproduced by mechanical means is recognised as sufficient only where such reproduction is customarily permitted, and in particular in the case of signatures on large numbers of issued securities.

<sup>2bis</sup> An authenticated electronic signature combined with an authenticated time stamp within the meaning of the Federal Act of 18 March 2016<sup>4</sup> on Electronic Signatures is deemed equivalent to a handwritten signature, subject to any statutory or contractual provision to the contrary.<sup>5</sup>

<sup>3</sup> The signature of a blind person is binding only if it has been duly certified or if it is proved that he was aware of the terms of the document at the time of signing.

**Art. 15**

- d. Mark in lieu of signature

Subject to the provisions relating to bills of exchange, any person unable to sign may make a duly certified mark by hand or give a certified declaration in lieu of a signature.

**Art. 16**

2. Form stipulated by contract

<sup>1</sup> Where the parties agree to make a contract subject to formal requirements not prescribed by law, it is presumed that the parties do not wish to assume obligations until such time as those requirements are satisfied.

<sup>3</sup> Repealed by Annex No 2 to the FA of 19 Dec 2003 on Electronic Signatures, with effect from 1 Jan 2005 (AS **2004** 5085; BBl **2001** 5679).

<sup>4</sup> SR **943.03**

<sup>5</sup> Inserted by Annex No 2 to the FA of 19 Dec 2003 on Electronic Signatures (AS **2004** 5085; BBl **2001** 5679). Amended by Annex No II 4 of the FA of 18 March 2016 on Electronic Signatures, in force since 1 Jan 2017 (AS **2016** 4651; BBl **2014** 1001).

<sup>2</sup> Where the parties stipulate a written form without elaborating further, the provisions governing the written form as required by law apply to satisfaction of that requirement.

### **Art. 17**

C. Cause of obligation

An acknowledgment of debt is valid even if it does not state the cause of the obligation.

### **Art. 18**

D. Interpretation of contracts, simulation

<sup>1</sup> When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement.

<sup>2</sup> A debtor may not plead simulation as a defence against a third party who has become his creditor in reliance on a written acknowledgment of debt.

### **Art. 19**

E. Terms of the contract  
I. Definition of terms

<sup>1</sup> The terms of a contract may be freely determined within the limits of the law.

<sup>2</sup> Clauses that deviate from those prescribed by law are admissible only where the law does not prescribe mandatory forms of wording or where deviation from the legally prescribed terms would contravene public policy, morality or rights of personal privacy.

### **Art. 20**

II. Nullity

<sup>1</sup> A contract is void if its terms are impossible, unlawful or immoral.

<sup>2</sup> However, where the defect pertains only to certain terms of a contract, those terms alone are void unless there is cause to assume that the contract would not have been concluded without them.

### **Art. 21**

III. Unfair advantage

<sup>1</sup> Where there is a clear discrepancy between performance and consideration under a contract concluded as a result of one party's exploitation of the other's straitened circumstances, inexperience or thoughtlessness, the injured party may declare within one year that he will not honour the contract and demand restitution of any performance already made.

<sup>2</sup> The one-year period commences on conclusion of the contract.

**Art. 22**

IV. Agreement to conclude a contract

<sup>1</sup> Parties may reach a binding agreement to enter into a contract at a later date.

<sup>2</sup> Where in the interests of the parties the law makes the validity of a contract conditional on observance of a particular form, the same applies to the agreement to conclude a contract.

**Art. 23**

F. Defect in consent  
I. Error  
1. Effect

A party labouring under a fundamental error when entering into a contract is not bound by that contract.

**Art. 24**

2. Cases of mistake

<sup>1</sup> An error is fundamental in the following cases in particular:

1. where the party acting in error intended to conclude a contract different from that to which he consented;
2. where the party acting in error has concluded a contract relating to a subject matter other than the subject matter he intended or, where the contract relates to a specific person, to a person other than the one he intended;
3. where the party acting in error has promised to make a significantly greater performance or has accepted a promise of a significantly lesser consideration than he actually intended;
4. where the error relates to specific facts which the party acting in error considered in good faith to be a necessary basis for the contract.

<sup>2</sup> However, where the error relates solely to the reason for concluding the contract, it is not fundamental.

<sup>3</sup> Calculation errors do not render a contract any less binding, but must be corrected.

**Art. 25**

3. Invoking error contrary to good faith

<sup>1</sup> A person may not invoke error in a manner contrary to good faith.

<sup>2</sup> In particular, the party acting in error remains bound by the contract he intended to conclude, provided the other party accepts that contract.

**Art. 26**

4. Error by negligence

<sup>1</sup> A party acting in error and invoking that error to repudiate a contract is liable for any loss or damage arising from the nullity of the agreement where the error is attributable to his own negligence, unless the other party knew or should have known of the error.

<sup>2</sup> In the interests of equity, the court may award further damages to the injured party.

### Art. 27

5. Incorrect intermediation

Where an offer to enter into a contract or the acceptance of that offer has been incorrectly communicated by a messenger or other intermediary, the provisions governing error apply *mutatis mutandis*.

### Art. 28

II. Fraud

<sup>1</sup> A party induced to enter into a contract by the fraud of the other party is not bound by it even if his error is not fundamental.

<sup>2</sup> A party who is the victim of fraud by a third party remains bound by the contract unless the other party knew or should have known of the fraud at the time the contract was concluded.

### Art. 29

III. Duress  
1. Consent to contract

<sup>1</sup> Where a party has entered into a contract under duress from the other party or a third party, he is not bound by that contract.

<sup>2</sup> Where the duress originates from a third party and the other party neither knew nor should have known of it, a party under duress who wishes to be released from the contract must pay compensation to the other party where equity so requires.

### Art. 30

2. Definition of duress

<sup>1</sup> A party is under duress if, in the circumstances, he has good cause to believe that there is imminent and substantial risk to his own life, limb, reputation or property or to those of a person close to him.

<sup>2</sup> The fear that another person might enforce a legitimate claim is taken into consideration only where the straitened circumstances of the party under duress have been exploited in order to extort excessive benefits from him.

### Art. 31

IV. Defect of consent negated by ratification of the contract

<sup>1</sup> Where the party acting under error, fraud or duress neither declares to the other party that he intends not to honour the contract nor seeks restitution for the performance made within one year, the contract is deemed to have been ratified.

<sup>2</sup> The one-year period runs from the time that the error or the fraud was discovered or from the time that the duress ended.

<sup>3</sup> The ratification of a contract made voidable by duress or fraud does not automatically exclude the right to claim damages.

**Art. 32**

G. Agency  
 I. With authorisation  
 1. In general  
 a. Effect of agency

<sup>1</sup> The rights and obligations arising from a contract made by an agent in the name of another person accrue to the person represented, and not to the agent.

<sup>2</sup> Where the agent did not make himself known as such when making the contract, the rights and obligations arising therefrom accrue directly to the person represented only if the other party must have inferred the agency relationship from the circumstances or did not care with whom the contract was made.

<sup>3</sup> Where this is not the case, the claim must be assigned or the debt assumed in accordance with the principles governing such measures.

**Art. 33**

b. Scope of authority

<sup>1</sup> Where authority to act on behalf of another stems from relationships established under public law, it is governed by the public law provisions of the Confederation or the cantons.

<sup>2</sup> Where such authority is conferred by means of the transaction itself, its scope is determined by that transaction.

<sup>3</sup> Where a principal grants such authority to a third party and informs the latter thereof, the scope of the authority conferred on the third party is determined according to wording of the communication made to him.

**Art. 34**

2. Authority arising from a transaction  
 a. Restriction and revocation

<sup>1</sup> A principal authorising another to act on his behalf by means of a transaction may restrict or revoke such authority at any time without prejudice to any rights acquired by those involved under existing legal relationships, such as an individual contract of employment, a partnership agreement or an agency agreement.<sup>6</sup>

<sup>2</sup> Any advance waiver of this right by the principal is void.

<sup>3</sup> Where the represented party has expressly or de facto announced the authority he has conferred, he may not invoke its total or partial revocation against a third party acting in good faith unless he has likewise announced such revocation.

**Art. 35**

b. Effect of death, incapacity, etc.

<sup>1</sup> The authority conferred by means of a transaction is extinguished on the loss of capacity to act, bankruptcy, death, or declaration of pre-

<sup>6</sup> Amended by No II Art. 1 No 1 of the FA of 25 June 1971, in force since 1 Jan 1972 (AS 1971 1465; BBl 1967 II 241). See also the Final and Transitional Provisions of Title X, at the end of this Code.



sumed death of the principal or the agent, unless the contrary has been agreed or is implied by the nature of the transaction.<sup>7</sup>

<sup>2</sup> The same applies on the dissolution of a legal entity or a company or partnership entered in the commercial register.

<sup>3</sup> The mutual personal rights of the parties are unaffected.

### Art. 36

c. Return of the instrument conferring authority

<sup>1</sup> Where an agent has been issued with an instrument setting out his authority, he must return it or deposit it with the court when that authority has ended.

<sup>2</sup> Where the principal or his legal successors have omitted to insist on the return of such instrument, they are liable to bona fide third parties for any loss or damage arising from that omission.

### Art. 37

d. Time from which end of authority takes effect

<sup>1</sup> Until such time as an agent becomes aware that his authority has ended, his actions continue to give rise to rights and obligations on the part of the principal or the latter's legal successors as if the agent's authority still existed.

<sup>2</sup> This does not apply in cases in which the third party is aware that the agent's authority has ended.

### Art. 38

II. Without authority  
1. Ratification

<sup>1</sup> Where a person without authority enters into a contract on behalf of a third party, rights and obligations do not accrue to the latter unless he ratifies the contract.

<sup>2</sup> The other party has the right to request that the represented party ratify the contract within a reasonable time, failing which he is no longer bound by it.

### Art. 39

2. Failure to ratify

<sup>1</sup> Where ratification is expressly or implicitly refused, action may be brought against the person who acted as agent for compensation in respect of any damage caused by the extinction of the contract unless he can prove that the other party knew or should have known that he lacked the proper authority.

<sup>2</sup> Where the agent is at fault, the court may order him to pay further damages on grounds of equity.

<sup>3</sup> In all cases, claims for unjust enrichment are reserved.

<sup>7</sup> Amended by Annex No 10 of the FA of 19 Dec 2008 (Adult Protection, Law of Persons and Law of Children), in force since 1 Jan 2013 (AS 2011 725; BBl 2006 7001).

**Art. 40**

III. Reservation  
of special  
provisions

The special provisions governing the authority of agents and governing bodies of companies and partnerships and of registered and other authorised agents are unaffected.

**Art. 40<sup>a</sup>**<sup>8</sup>

H. Revocation in  
door-to-door  
sales and similar  
contracts  
I. Scope of  
application

<sup>1</sup> The following provisions apply to contracts relating to goods and services intended for the customer's personal or family use where:

- a. the supplier of the goods or services acted in a professional or commercial capacity and
- b. the consideration from the buyer exceeds 100 francs.

<sup>2</sup> These provisions do not apply to insurance policies.

<sup>3</sup> In the event of significant change to the purchasing power of the national currency, the Federal Council shall adjust the sum indicated in para. 1 let. b accordingly.

**Art. 40<sup>b</sup>**<sup>9</sup>

II. General  
principle

A customer may revoke his offer to enter into a contract or his acceptance of such an offer if the transaction was proposed:

- a.<sup>10</sup> at his place of work, on residential premises or in their immediate vicinity;
- b. on public transport or on a public thoroughfare;
- c. during a promotional event held in connection with an excursion or similar event;
- d.<sup>11</sup> by telephone or by a comparable means of simultaneous verbal communication.

**Art. 40<sup>c</sup>**<sup>12</sup>

III. Exceptions

The customer has no right of revocation:

- a. if he expressly requested the contractual negotiations;

<sup>8</sup> Inserted by No I of the FA of 5 Oct. 1990, in force since 1 July 1991 (AS 1991 846; BBl 1986 II 354).

<sup>9</sup> Inserted by No I of the FA of 5 Oct. 1990, in force since 1 July 1991 (AS 1991 846; BBl 1986 II 354).

<sup>10</sup> Amended by No I of the FA of 18 June 1993, in force since 1 Jan 1994 (AS 1993 3120; BBl 1993 I 757).

<sup>11</sup> Inserted by No I of the FA of 19 June 2015 (Revision of the right of revocation), in force since 1 Jan 2016 (AS 2015 4107; BBl 2014 921 2993).

<sup>12</sup> Inserted by No I of the FA of 5 Oct. 1990 (AS 1991 846; BBl 1986 II 354). Amended by No I of the FA of 18 June 1993, in force since 1 Jan 1994 (AS 1993 3120; BBl 1993 I 757).

- b. if he declared his offer or acceptance at a stand at a market or trade fair.

**Art. 40d**<sup>13</sup>

IV. Duty to inform

1 The supplier must inform the customer in writing or in another form that may be evidenced by text of the latter's right of revocation and of the form and time limit to be observed when exercising such right, and must provide his address.<sup>14</sup>

2 Such information must be dated and permit identification of the contract in question.

3 The information must be transmitted in such a manner that the customer is aware of it when he proposes or accepts the contract.<sup>15</sup>

**Art. 40e**<sup>16</sup>

V. Revocation  
1. Form and time limit

1 Revocation need not be in any particular form. The onus is on the customer to prove that he has revoked the contract within the time limit.<sup>17</sup>

2 The limitation period for revocation is 14 days and commences as soon as the customer:<sup>18</sup>

- a. has proposed or accepted the contract; and
- b. has become aware of the information stipulated in Art. 40d.

3 The onus is on the supplier to prove when the customer received the information stipulated in Art. 40d.

4 The time limit is observed if, on the last day of the limitation period, the customer informs the supplier of revocation or posts his written notice of revocation.<sup>19</sup>

<sup>13</sup> Inserted by No I of the FA of 5 Oct. 1990 (AS 1991 846; BBI 1986 II 354). Amended by No I of the FA of 18 June 1993, in force since 1 Jan 1994 (AS 1993 3120; BBI 1993 I 757).

<sup>14</sup> Amended by No I of the FA of 19 June 2015 (Revision of the right of revocation), in force since 1 Jan 2016 (AS 2015 4107; BBI 2014 921 2993).

<sup>15</sup> Amended by No I of the FA of 19 June 2015 (Revision of the right of revocation), in force since 1 Jan 2016 (AS 2015 4107; BBI 2014 921 2993).

<sup>16</sup> Inserted by No I of the FA of 5 October 1990 (AS 1991 846; BBI 1986 II 354). Amended by No I of the FA of 18 June 1993, in force since 1 Jan 1994 (AS 1993 3120; BBI 1993 I 757).

<sup>17</sup> Amended by No I of the FA of 19 June 2015 (Revision of the right of revocation), in force since 1 Jan 2016 (AS 2015 4107; BBI 2014 921 2993).

<sup>18</sup> Amended by No I of the FA of 19 June 2015 (Revision of the right of revocation), in force since 1 Jan 2016 (AS 2015 4107; BBI 2014 921 2993).

<sup>19</sup> Amended by No I of the FA of 19 June 2015 (Revision of the right of revocation), in force since 1 Jan 2016 (AS 2015 4107; BBI 2014 921 2993).

**Art. 40<sup>f20</sup>**

2. Consequences
- <sup>1</sup> Where the customer has revoked the contract, the parties must provide restitution for any performance already made.
  - <sup>2</sup> Where the customer has made use of the goods, he owes an appropriate rental payment to the supplier.
  - <sup>3</sup> Where the supplier has rendered services to him, the customer must reimburse the supplier for outlays and expenses incurred in accordance with the provisions governing agency (Art. 402).
  - <sup>4</sup> The customer does not owe the supplier any further compensation.

**Art. 40g<sup>21</sup>****Section Two: Obligations in Tort****Art. 41**

A. General principles  
I. Conditions of liability

- <sup>1</sup> Any person who unlawfully causes loss or damage to another, whether wilfully or negligently, is obliged to provide compensation.
- <sup>2</sup> A person who wilfully causes loss or damage to another in an immoral manner is likewise obliged to provide compensation.

**Art. 42**

II. Determining the loss or damage

- <sup>1</sup> A person claiming damages must prove that loss or damage occurred.
- <sup>2</sup> Where the exact value of the loss or damage cannot be quantified, the court shall estimate the value at its discretion in the light of the normal course of events and the steps taken by the injured party.
- <sup>3</sup> The costs of treating animals kept as pets rather than for investment or commercial purposes may be claimed within appropriate limits as a loss even if they exceed the value of the animal.<sup>22</sup>

**Art. 43**

III. Determining compensation

- <sup>1</sup> The court determines the form and extent of the compensation provided for loss or damage incurred, with due regard to the circumstances and the degree of culpability.

<sup>20</sup> Inserted by No I of the FA of 5 Oct. 1990, in force since 1 July 1991 (AS 1991 846; BBI 1986 II 354).

<sup>21</sup> Inserted by No I of the FA of 5 Oct. 1990 (AS 1991 846; BBI 1986 II 354). Repealed by Annex No 5 to the Civil Jurisdiction Act of 24 March 2000, with effect from 1 Jan 2001 (AS 2000 2355; BBI 1999 2829).

<sup>22</sup> Inserted by No II of the FA of 4 Oct. 2002 (Animals), in force since 1 April 2003 (AS 2003 463; BBI 2002 3885 5418).

1bis Where an animal kept as a pet rather than for investment or commercial purposes has been injured or killed, the court may take appropriate account of its sentimental value to its owner or his dependants.<sup>23</sup>

<sup>2</sup> Where damages are awarded in the form of periodic payments, the debtor must at the same time post security.

#### Art. 44

IV. Grounds for reducing compensation

<sup>1</sup> Where the injured party consented to the action which caused the loss or damage or circumstances attributable to him helped give rise to or compound the loss or damage or otherwise exacerbated the position of the party liable for it, the court may reduce the compensation due or even dispense with it entirely.

<sup>2</sup> The court may also reduce the compensation award in cases in which the loss or damage was caused neither wilfully nor by gross negligence and where payment of such compensation would leave the liable party in financial hardship.

#### Art. 45

V. Special cases  
1. Homicide and personal injury  
a. Damages for homicide

<sup>1</sup> In the event of homicide, compensation must cover all expenses arising and in particular the funeral costs.

<sup>2</sup> Where death did not occur immediately, the compensation must also include the costs of medical treatment and losses arising from inability to work.

<sup>3</sup> Where others are deprived of their means of support as a result of homicide, they must also be compensated for that loss.

#### Art. 46

b. Damages for personal injury

<sup>1</sup> In the event of personal injury, the victim is entitled to reimbursement of expenses incurred and to compensation for any total or partial inability to work and for any loss of future earnings.

<sup>2</sup> Where the consequences of the personal injury cannot be assessed with sufficient certainty at the time the award is made, the court may reserve the right to amend the award within two years of the date on which it was made.

#### Art. 47

c. Satisfaction

In cases of homicide or personal injury, the court may award the victim of personal injury or the dependants of the deceased an appropriate sum by way of satisfaction.

<sup>23</sup> Inserted by No II of the FA of 4 Oct. 2002 (Animals), in force since 1 April 2003 (AS 2003 463; BBl 2002 3885 5418).

**Art. 48<sup>24</sup>**

2. ...

**Art. 49<sup>25</sup>**3. Injury to  
personality rights

<sup>1</sup> Any person whose personality rights are unlawfully infringed is entitled to a sum of money by way of satisfaction provided this is justified by the seriousness of the infringement and no other amends have been made.

<sup>2</sup> The court may order that satisfaction be provided in another manner instead of or in addition to monetary compensation.

**Art. 50**VI. Multiple  
liable parties  
1. In tort

<sup>1</sup> Where two or more persons have together caused damage, whether as instigator, perpetrator or accomplice, they are jointly and severally liable to the injured party.

<sup>2</sup> The court determines at its discretion whether and to what extent they have right of recourse against each other.

<sup>3</sup> Abettors are liable in damages only to the extent that they received a share in the gains or caused loss or damage due to their involvement.

**Art. 51**2. On different  
legal grounds

<sup>1</sup> Where two or more persons are liable for the same loss or damage on different legal grounds, whether under tort law, contract law or by statute, the provision governing recourse among persons who have jointly caused damage is applicable *mutatis mutandis*.

<sup>2</sup> As a rule, compensation is provided first by those who are liable in tort and last by those who are deemed liable by statutory provision without being at fault or in breach of contractual obligation.

**Art. 52**VII. Self-  
defence,  
necessity,  
legitimate use of  
force

<sup>1</sup> Where a person has acted in self-defence, he is not liable to pay compensation for loss or damage caused to the person or property of the aggressor.

<sup>2</sup> A person who damages the property of another in order to protect himself or another person against imminent damage or danger must pay damages at the court's discretion.

<sup>24</sup> Repealed by Art. 21 para. 1 of the FA of 30 Sept. 1943 on Unfair Competition, with effect from 1 March 1945 (BS 2 951).

<sup>25</sup> Amended by No II 1 of the FA of 16 Dec 1983, in force since 1 July 1985 (AS 1984 778; BBl 1982 II 661).

<sup>3</sup> A person who uses force to protect his rights is not liable in damages if in the circumstances the assistance of the authorities could not have been obtained in good time and such use of force was the only means of preventing the loss of his rights or a significant impairment of his ability to exercise them.

### Art. 53

VIII. Relationship with criminal law

<sup>1</sup> When determining fault or lack of fault and capacity or incapacity to consent, the court is not bound by the provisions governing criminal capacity nor by any acquittal in the criminal court.

<sup>2</sup> The civil court is likewise not bound by the verdict in the criminal court when determining fault and assessing compensation.

### Art. 54

B. Liability of persons lacking capacity to consent

<sup>1</sup> On grounds of equity, the court may also order a person who lacks capacity to consent to provide total or partial compensation for the loss or damage he has caused.

<sup>2</sup> A person who has temporarily lost his capacity to consent is liable for any loss or damage caused when in that state unless he can prove that said state arose through no fault of his own.

### Art. 55

C. Liability of employers

<sup>1</sup> An employer is liable for the loss or damage caused by his employees or ancillary staff in the performance of their work unless he proves that he took all due care to avoid a loss or damage of this type or that the loss or damage would have occurred even if all due care had been taken.<sup>26</sup>

<sup>2</sup> The employer has a right of recourse against the person who caused the loss or damage to the extent that such person is liable in damages.

### Art. 56

D. Liability for animals  
I. Damages

<sup>1</sup> In the event of loss or damage caused by an animal, its keeper is liable unless he proves that in keeping and supervising the animal he took all due care or that the damage would have occurred even if all due care had been taken.

<sup>26</sup> Amended by No II Art. 1 No 2 of the FA of 25 June 1971, in force since 1 Jan 1972 (AS 1971 1465; BBl 1967 II 241). See also the Final and Transitional Provisions of Title X, at the end of this Code.

<sup>2</sup> He has a right of recourse if the animal was provoked either by another person or by an animal belonging to another person.

<sup>3</sup> ...<sup>27</sup>

### Art. 57

II. Seizure of animals

<sup>1</sup> A person in possession of a plot of land is entitled to seize animals belonging to another which cause damage on that land and take them into his custody as security for his claim for compensation or even to kill them, where justified by the circumstances.

<sup>2</sup> He nonetheless has an obligation to notify the owner of such animals without delay or, if the owner is not known to him, to take the necessary steps to trace the owner.

### Art. 58

E. Liability of property owners  
I. Damages

<sup>1</sup> The owner of a building or any other structure is liable for any damage caused by defects in its construction or design or by inadequate maintenance.

<sup>2</sup> He has a right of recourse against persons liable to him in this regard.

### Art. 59

II. Safety measures

<sup>1</sup> A person who is at risk of suffering loss or damage due to a building or structure belonging to another may insist that the owner take the necessary steps to avert the danger.

<sup>2</sup> Orders given by the police for the protection of persons and property are unaffected.

### Art. 59a<sup>28</sup>

F. Liability in respect of cryptographic keys

<sup>1</sup> The owner of a cryptographic key used to generate electronic signatures or seals is liable to third parties for any loss or damage they have suffered as a result of relying on a valid certificate issued by a provider of certification services within the meaning of the Federal Act of 18 March 2016<sup>29</sup> on Electronic Signatures.

<sup>2</sup> The owner is absolved of liability if he can satisfy the court that he took all the security precautions that could reasonably be expected in the circumstances to prevent misuse of the cryptographic key.

<sup>27</sup> Repealed by Art. 27 No 3 of the FA of 20 June 1986 on Hunting, with effect from 1 April 1988 (AS 1988 506; BBl 1983 II 1197).

<sup>28</sup> Inserted by Annex No 2 to the FA of 19 Dec 2003 on Electronic Signatures (AS 2004 5085; BBl 2001 5679). Amended by Annex No II 4 of the FA of 18 March 2016 on Electronic Signatures, in force since 1 Jan 2017 (AS 2016 4651; BBl 2014 1001)

<sup>29</sup> SR 943.03



<sup>3</sup> The Federal Council defines the security precautions to be taken pursuant to paragraph 2.

### Art. 60

G. Time limits<sup>30</sup> 1 A claim for damages or satisfaction becomes time-barred one year from the date on which the injured party became aware of the loss or damage and of the identity of the person liable for it but in any event ten years after the date on which the loss or damage was caused.

<sup>2</sup> However, if the action for damages is derived from an offence for which criminal law envisages a longer limitation period, that longer period also applies to the civil law claim.

<sup>3</sup> Where the tort has given rise to a claim against the injured party, he may refuse to satisfy the claim even if his own claim in tort is time-barred.

### Art. 61

H. Liability of civil servants and public officials<sup>31</sup>

1 The Confederation and the cantons may by way of legislation enact provisions that deviate from those of this Section to govern the liability of civil servants and public officials to pay damages or satisfaction for any damage they cause in the exercise of their duties.

<sup>2</sup> The provisions of this Section may not, however, be modified by cantonal legislation in the case of commercial duties performed by civil servants or public officials.

## Section Three: Obligations deriving from Unjust Enrichment

### Art. 62

A. Requirement  
I. In general

1 A person who has enriched himself without just cause at the expense of another is obliged to make restitution.

<sup>2</sup> In particular, restitution is owed for money benefits obtained for no valid reason whatsoever, for a reason that did not transpire or for a reason that subsequently ceased to exist.

<sup>30</sup> Amended by Annex No 2 to the FA of 19 Dec 2003 on Electronic Signatures, in force since 1 Jan 2005 (AS 2004 5085; BBl 2001 5679.03).

<sup>31</sup> Amended by Annex No 2 to the FA of 19 Dec 2003 on Electronic Signatures, in force since 1 Jan 2005 (AS 2004 5085; BBl 2001 5679).

II. Payment in satisfaction of a non-existent obligation

### Art. 63

<sup>1</sup> A person who has voluntarily satisfied a non-existent debt has a right to restitution of the sum paid only if he can prove that he paid it in the erroneous belief that the debt was owed.

<sup>2</sup> Restitution is excluded where payment was made in satisfaction of a debt that has become time-barred or of a moral obligation.

<sup>3</sup> The provisions of federal debt collection and bankruptcy law governing the right to the restitution of payments made in satisfaction of non-existent claims are unaffected.

B. Scope of restitution  
I. Obligations of the unjustly enriched party

### Art. 64

There is no right of restitution where the recipient can show that he is no longer enriched at the time the claim for restitution is brought, unless he alienated the money benefits in bad faith or in the certain knowledge that he would be bound to return them.

II. Rights in respect of expenditures

### Art. 65

<sup>1</sup> The recipient is entitled to reimbursement of necessary and useful expenditures, although where the unjust enrichment was received in bad faith, the reimbursement of useful expenditures must not exceed the amount of added value as at the time of restitution.

<sup>2</sup> He is not entitled to any compensation for other expenditures, but where no such compensation is offered to him, he may, before returning the property, remove anything he has added to it provided this is possible without damaging it.

C. Exclusion of restitution

### Art. 66

No right to restitution exists in respect of anything given with a view to producing an unlawful or immoral outcome.

D. Time limits

### Art. 67

<sup>1</sup> A claim for restitution for unjust enrichment becomes time-barred one year after the date on which the injured party learned of his claim and in any event ten years after the date on which the claim first arose.

<sup>2</sup> Where the unjust enrichment consists of a claim against the injured party, he may refuse to satisfy the claim even if his own claim for restitution is time-barred.

## **Title Two: Effect of Obligations**

### **Section One: Performance of Obligations**

#### **Art. 68**

A. General principles  
I. Performance by the obligor in person

An obligor is not obliged to discharge his obligation in person unless so required by the obligee.

#### **Art. 69**

II. Object of performance  
1. Part payment

<sup>1</sup> A creditor may refuse partial payment where the total debt is established and due.

<sup>2</sup> If the creditor wishes to accept part payment, the debtor may not refuse to settle the part of the debt that he acknowledges is due.

#### **Art. 70**

2. Indivisible performance

<sup>1</sup> Where an indivisible performance is owed to several obligees, the obligor must make performance to all of them jointly, and each obligee may demand that performance be rendered to all of them jointly.

<sup>2</sup> Where an indivisible performance is owed by several obligors, each of them has an obligation to render performance in full.

<sup>3</sup> Unless circumstances dictate otherwise, an obligor who has satisfied the obligee may then claim proportionate compensation from the other obligors and to that extent the claim of the satisfied obligee passes to him.

#### **Art. 71**

3. Debt of generic object

<sup>1</sup> If the object owed is defined only in generic terms, the obligor may choose what object is given in repayment unless otherwise stipulated under the legal relationship.

<sup>2</sup> However, the obligor must not offer an object of less-than-average quality.

#### **Art. 72**

4. Obligations involving choice of performance

Where an obligation may be discharged by one of several alternative types of performance, the obligor may choose which performance to make unless otherwise stipulated under the legal relationship.

#### **Art. 73**

5. Interest

<sup>1</sup> Where an obligation involves the payment of interest but the rate is not set by contract, law or custom, interest is payable at the rate of 5% per annum.

<sup>2</sup> Public law provisions governing abusive interest charges are not affected.

#### **Art. 74**

B. Place of performance

<sup>1</sup> The place of performance is determined by the intention of the parties as stated expressly or evident from the circumstances.

<sup>2</sup> Except where otherwise stipulated, the following principles apply:

1. pecuniary debts must be paid at the place where the creditor is resident at the time of performance;
2. where a specific object is owed, it must be delivered at the place where it was located when the contract was entered into;
3. other obligations must be discharged at the place where the obligor was resident at the time they arose.

<sup>3</sup> Where the obligee may require performance of an obligation at his domicile but this has changed since the obligation arose, thereby significantly hindering performance by the obligor, the latter is entitled to render performance at the original domicile.

#### **Art. 75**

C. Time of performance  
I. Open-ended obligations

Where no time of performance is stated in the contract or evident from the nature of the legal relationship, the obligation may be discharged or called in immediately.

#### **Art. 76**

II. Obligations subject to time limit  
1. Monthly time limits

<sup>1</sup> A time limit expressed as the beginning or end of a month means the first or last day of the month respectively.

<sup>2</sup> A time limit expressed as the middle of the month means the fifteenth day of that month.

#### **Art. 77**

2. Other time limits

<sup>1</sup> Where an obligation must be discharged or some other transaction accomplished within a certain time limit subsequent to conclusion of the contract, the time limit is defined as follows:

1. where the time limit is expressed as a number of days, performance falls due on the last thereof, not including the date on which the contract was concluded, and where the number stipulated is eight or fifteen days, this means not one or two weeks but a full eight or fifteen days;

2. where the time limit is expressed as a number of weeks, performance falls due in the last week of the period on the same day of the week as the one on which the contract was concluded;
3. where the time limit is expressed as a number of months or as a period comprising several months (a year, half-year or quarter), performance falls due in the last month of the period on the same day of the month as the one on which the contract was concluded or, where the last month of the period contains no such day, on the last day of that month.

The term ‘half-month’ has the same meaning as a time limit of fifteen days; if the time limit is expressed as a period of one or more months plus one half-month, the fifteen days are counted last.

<sup>2</sup> Time limits are calculated in the same manner when stipulated as running from a date other than the date on which the contract was concluded.

<sup>3</sup> Where an obligation must be discharged before a specified time limit, performance must occur before that time expires.

#### Art. 78

3. Sundays and public holidays

<sup>1</sup> Where the time of performance or the last day of a time limit falls on a Sunday or on a day officially recognised as a public holiday<sup>32</sup> at the place of performance, the time of performance or the last day of a time limit is deemed to be the next working day.

<sup>2</sup> Any agreement to the contrary is unaffected.

#### Art. 79

III. Performance during business hours

Performance of the obligation must be made and accepted during normal business hours on the date stipulated.

#### Art. 80

IV. Extension of the time limit

Where the agreed time limit for performance is extended, in the absence of an agreement to the contrary, the new time limit runs from the first day following expiry of the previous time limit.

#### Art. 81

V. Early performance

<sup>32</sup> In relation to the statutory time limits under federal law and the time limits fixed by authorities by virtue of federal law, Saturday is now regarded as equivalent to a public holiday (Art. 1 of the FA of 21 June 1963 on the Application of Limitation Periods to Saturdays; SR 173.110.3).

<sup>1</sup> Unless the terms or nature of the contract or the circumstances indicate that the parties intended otherwise, performance may be rendered before the date on which the time limit expires.

<sup>2</sup> However, the obligor is not entitled to apply a discount unless that discount has been agreed or is sanctioned by custom.

### **Art. 82**

VI. In bilateral contracts  
1. Order of performance

A party to a bilateral contract may not demand performance until he has discharged or offered to discharge his own obligation, unless the terms or nature of the contract allow him to do so at a later date.

### **Art. 83**

2. Allowance for unilateral insolvency

<sup>1</sup> Where one party to a bilateral contract has become insolvent, in particular by virtue of bankruptcy proceedings or execution without satisfaction, and this deterioration in its financial position jeopardises the claim of the other party, the latter may withhold performance until security has been provided for the consideration.

<sup>2</sup> He may withdraw from the contract if, on request, no such security is provided within a reasonable time.

### **Art. 84<sup>33</sup>**

D. Payment  
I. National currency

<sup>1</sup> Pecuniary debts must be discharged in legal tender of the currency in which the debt was incurred.

<sup>2</sup> A debt expressed in a currency other than the national currency of the place of payment may be discharged in that national currency at the rate of exchange that applies on the day it falls due, unless literal performance is required by inclusion in the contract of the expression ‘actual currency’ or words to that effect.

### **Art. 85**

II. Allocation  
1. Of part payments

<sup>1</sup> A debtor may offset a part payment against the debt principal only if he is not in arrears with interest payments and expenses.

<sup>2</sup> Where a creditor has received guarantees, pledges or other security for a portion of his claim, the debtor may not offset a part payment against that portion in preference to less well secured portions of the claim.

<sup>33</sup> Amended by Annex No 2 to the FA of 22 Dec 1999 on Currency and Payment Instruments, in force since 1 May 2000 (AS 2002 1144; BBl 1999 7258).

**Art. 86**

2. In the case of multiple debts  
a. At the discretion of debtor or creditor

<sup>1</sup> A debtor with several debts to the same creditor is entitled to state at the time of payment which debt he means to redeem.

<sup>2</sup> In the absence of any statement from the debtor, the payment will be allocated to the debt indicated by the creditor in his receipt, unless the debtor objects immediately.

**Art. 87**

b. By law

<sup>1</sup> Where no valid debt redemption statement has been made and the receipt does not indicate how the payment has been allocated, it is allocated to whichever debt is due or, if several are due, to the debt that first gave rise to enforcement proceedings against the debtor or, in the absence of such proceedings, to the debt that fell due first.

<sup>2</sup> Where several debts fell due at the same time, the payment is offset against them proportionately.

<sup>3</sup> If none of the debts is yet due, the payment is allocated to the one offering the least security for the creditor.

**Art. 88**

III. Receipt and return of borrower's note  
1. Right of the debtor

<sup>1</sup> A debtor making a payment is entitled to demand a receipt and, provided the debt is fully redeemed, the return or annulment of the borrower's note.

<sup>2</sup> If the debt is not completely redeemed or the borrower's note confers other rights on the creditor, the debtor is entitled to demand only a receipt and that a record of the payment be entered on the borrower's note.

**Art. 89**

2. Effect

<sup>1</sup> Where interest or other periodic payments are due, a creditor unreversedly issuing a receipt for a later periodic payment is presumed to have received all previous periodic payments.

<sup>2</sup> If he issues a receipt for redemption of the debt principal, he is presumed to have received the interest.

<sup>3</sup> The return of the borrower's note to the debtor gives rise to a presumption that the debt has been redeemed.

**Art. 90**

3. Return of borrower's note not possible

<sup>1</sup> If the creditor claims to have lost the borrower's note, on redeeming the debt, the debtor may insist that the creditor declare by public deed or notarised document that the borrower's note has been annulled and the debt redeemed.

<sup>2</sup> The provisions governing annulment of securities are reserved.

### Art. 91

E. Default of obligee  
I. Requirement

The obligee is in default if he refuses without good cause to accept performance properly offered to him or to carry out such preparations as he is obliged to make and without which the obligor cannot render performance.

### Art. 92

II. Effect  
1. On obligations relating to objects  
a. Right to deposit object

<sup>1</sup> Where the obligee is in default, the obligor is entitled to deposit the object at the expense and risk of the obligee, thereby discharging his obligation.

<sup>2</sup> The court decides which place should serve as depositary; however, merchandise may be deposited in a warehouse without need for a court decision.<sup>34</sup>

### Art. 93

b. Right to sell

<sup>1</sup> Where the characteristics of the object or the nature of the business preclude a deposit or the object is perishable or gives rise to maintenance costs or substantial storage costs, after having given formal warning to the obligee and with the court's permission, the obligor may dispose of the object by open sale and deposit the sale proceeds.

<sup>2</sup> Where the object has a quoted stock exchange or market price or its value is low in proportion to the costs involved, the sale need not be open and the court may authorise it without prior warning.

### Art. 94

c. Right to take back the object

<sup>1</sup> The obligor is entitled to take back the object deposited providing the obligee has not declared that he accepts it or providing the deposit has not had the effect of redeeming a pledge.

<sup>2</sup> As soon as the object is taken back, the claim and all accessory rights become effective again.

### Art. 95

2. On other obligations

Where the obligation does not relate to objects and the obligee is in default, the obligor may withdraw from the contract in accordance with the provisions governing default of the obligor.

<sup>34</sup> Amended by Annex No 5 to the Civil Jurisdiction Act of 24 March 2000, in force since 1 Jan 2001 (AS 2000 2355; BBl 1999 2829).



**Art. 96**

F. Performance prevented for other reasons

The obligor is entitled to deposit his performance or to withdraw from the contract, as in the case of default on the part of the obligee, where performance cannot be rendered either to the obligee or to his representative for some other reason pertaining to the obligee or where through no fault of the obligor there is uncertainty as to the identity of the obligee.

## **Section Two: The Consequences of Non-Performance of Obligations**

**Art. 97**

A. Failure to perform  
I. Obligor's duty to compensate  
1. In general

<sup>1</sup> An obligor who fails to discharge an obligation at all or as required must make amends for the resulting loss or damage unless he can prove that he was not at fault.

<sup>2</sup> The procedure for debt enforcement is governed by the provisions of the Federal Act of 11 April 1889<sup>35</sup> on Debt Collection and Bankruptcy and the Civil Procedure Code of 19 December 2008<sup>36</sup> (CPC).<sup>37</sup>

**Art. 98**

2. Obligation to act or refrain from action

<sup>1</sup> Where the obligation is to take certain action, the obligee may without prejudice to his claims for damages obtain authority to perform the obligation at the obligor's expense.

<sup>2</sup> Where the obligation is to refrain from taking certain action, any breach of such obligation renders the obligor liable to make amends for the loss or damage caused.

<sup>3</sup> In addition, the obligee may request that the situation constituting a breach of the obligation be rectified and may obtain authority to rectify it at the obligor's expense.

**Art. 99**

II. Scope of liability and compensation  
1. In general

<sup>1</sup> The obligor is generally liable for any fault attributable to him.

<sup>2</sup> The scope of such liability is determined by the particular nature of the transaction and in particular is judged more leniently where the obligor does not stand to gain from the transaction.

<sup>3</sup> In other respects, the provisions governing liability in tort apply *mutatis mutandis* to a breach of contract.

<sup>35</sup> SR 281.1

<sup>36</sup> SR 272

<sup>37</sup> Amended by Annex 1 No II 5 of the Civil Procedure Code of 19 Dec 2008, in force since 1 Jan 2011 (AS 2010 1739; BBl 2006 7221).

**Art. 100**

2. Exclusion of liability

<sup>1</sup> Any agreement purporting to exclude liability for unlawful intent or gross negligence in advance is void.

<sup>2</sup> At the discretion of the court, an advance exclusion of liability for minor negligence may be deemed void provided the party excluding liability was in the other party's service at the time the waiver was made or the liability arises in connection with commercial activities conducted under official licence.

<sup>3</sup> The specific provisions governing insurance policies are unaffected.

**Art. 101**

3. Liability for associates

<sup>1</sup> A person who delegates the performance of an obligation or the exercise of a right arising from a contractual obligation to an associate, such as a member of his household or an employee is liable to the other party for any loss or damage the associate causes in carrying out such tasks, even if their delegation was entirely authorised.<sup>38</sup>

<sup>2</sup> This liability may be limited or excluded by prior agreement.

<sup>3</sup> If the obligee is in the obligor's service or if the liability arises in connection with commercial activities conducted under official licence, any exclusion of liability by agreement may apply at most to minor negligence.

**Art. 102**

B. Default of obligor  
I. Requirement

<sup>1</sup> Where an obligation is due, the obligor is in default as soon as he receives a formal reminder from the obligee.

<sup>2</sup> Where a deadline for performance of the obligation has been set by agreement or as a result of a duly exercised right of termination reserved by one party, the obligor is automatically in default on expiry of the deadline.

**Art. 103**

II. Effect  
1. Liability for accidental damage

<sup>1</sup> An obligor in default is liable in damages for late performance and even for accidental loss or damage.

<sup>2</sup> He may discharge himself from such liability by proving that his default occurred through no fault of his own or that the object of performance would have suffered the accidental loss or damage to the detriment of the obligee even if performance had taken place promptly.

<sup>38</sup> Amended by No II Art. 1 No 3 of the FA of 25 June 1971, in force since 1 Jan 1972 (AS 1971 1465; BBl 1967 II 241). See also the Final and Transitional Provisions of Title X, at the end of this Code.

**Art. 104**

2. Default interest  
a. In general

<sup>1</sup> A debtor in default on payment of a pecuniary debt must pay default interest of 5% per annum even where a lower rate of interest was stipulated by contract.

<sup>2</sup> Where the contract envisages a rate of interest higher than 5%, whether directly or by agreement of a periodic bank commission, such higher rate of interest may also be applied while the debtor remains in default.

<sup>3</sup> In business dealings, where the normal bank discount rate at the place of payment is higher than 5%, default interest may be calculated at the higher rate.

**Art. 105**

b. Debtor in default on payments of interest, annuities and gifts

<sup>1</sup> A debtor in default on payment of interest, annuities or gifts is liable for default interest only as of the day on which enforcement proceedings are initiated or legal action is brought.

<sup>2</sup> Any agreement to the contrary is assessed by the court in accordance with the provisions governing penalty clauses.

<sup>3</sup> Default interest is never payable on default interest.

**Art. 106**

3. Excess damage

<sup>1</sup> Where the value of the loss or damage suffered by the creditor exceeds the default interest, the debtor is liable also for this additional loss or damage unless he can prove that he is not at fault.

<sup>2</sup> Where the additional damage can be anticipated, the court may award compensation for such damage in its judgment on the main claim.

**Art. 107**

4. Withdrawal and damages  
a. Subject to time limit

<sup>1</sup> Where the obligor under a bilateral contract is in default, the obligee is entitled to set an appropriate time limit for subsequent performance or to ask the court to set such time limit.

<sup>2</sup> If performance has not been rendered by the end of that time limit, the obligee may compel performance in addition to suing for damages in connection with the delay or, provided he makes an immediate declaration to this effect, he may instead forego subsequent performance and either claim damages for non-performance or withdraw from the contract altogether.

**Art. 108**

b. Without time limit

No time limit need be set:

1. where it is evident from the conduct of the obligor that a time limit would serve no purpose;
2. where performance has become pointless to the obligee as a result of the obligor's default;
3. where the contract makes it clear that the parties intended that performance take place at or before a precise point in time.

**Art. 109**

c. Effect of withdrawal

<sup>1</sup> An obligee withdrawing from a contract may refuse the promised consideration and demand the return of any performance already made.

<sup>2</sup> In addition he may claim damages for the lapse of the contract, unless the obligor can prove that he was not at fault.

**Section Three: Obligations involving Third Parties****Art. 110**

A. Subrogation

A third party who satisfies the creditor is by operation of law subrogated to his rights:

1. if he redeems an object given in pledge for the debt of another and he owns said object or has a limited right in rem in it;
2. if the debtor notifies the creditor that the third party who is paying is to take the creditor's place.

**Art. 111**

B. Guarantee of performance by third party

A person who gives an undertaking to ensure that a third party performs an obligation is liable in damages for non-performance by said third party.

**Art. 112**

C. Contracts conferring rights on third parties  
I. In general

<sup>1</sup> A person who, acting in his own name, has entered into a contract whereby performance is due to a third party is entitled to compel performance for the benefit of said third party.

<sup>2</sup> The third party or his legal successors have the right to compel performance where that was the intention of the contracting parties or is the customary practice.

<sup>3</sup> In this case the obligee may no longer release the obligor from his obligations once the third party has notified the obligor of his intention to exercise that right.

### Art. 113

II. In the case of liability insurance

Where an employer has taken out liability insurance and his employee has contributed at least half of the premiums, the employee has sole claim to the policy benefits.

## Title Three: Extinction of Obligations

### Art. 114

A. Extinction of accessory rights

<sup>1</sup> Where a claim ceases to exist by virtue of being satisfied or in some other manner, all accessory rights such as guarantees and charges are likewise extinguished.

<sup>2</sup> Interest that has accrued may be reclaimed only if that right is conferred on the obligee by the contract or is evident from the circumstances.

<sup>3</sup> The specific provisions governing charges on immovable property, securities and composition agreements are unaffected.

### Art. 115

B. Extinction by agreement

No particular form is required for the extinction of a claim by agreement even where the obligation itself could not be assumed without satisfying certain formal requirements required by law or elected by the parties.

### Art. 116

C. Novation  
I. In general

<sup>1</sup> Where a new debt relationship is contracted, there is no presumption of novation in respect of an old one.

<sup>2</sup> In particular, in the absence of agreement to the contrary, novation does not result from signature of a bill of exchange in respect of an existing debt or from the issue of a new borrower's note or contract of surety.

### Art. 117

II. In relation to current accounts

<sup>1</sup> The mere posting of individual entries in a current account does not result in novation.

<sup>2</sup> However, there is a presumption of novation if the balance on the account has been drawn and acknowledged.

<sup>3</sup> Where special security exists for one of the account entries, unless otherwise agreed, such security is retained even if the balance on the account is drawn and acknowledged.

### **Art. 118**

D. Merger

<sup>1</sup> An obligation is deemed extinguished by merger where the capacities of creditor and debtor are united in the same entity.

<sup>2</sup> In the event of de-merger, the obligation is revived.

<sup>3</sup> The specific provisions governing charges on immovable property and securities are unaffected.

### **Art. 119**

E. Performance becomes impossible

<sup>1</sup> An obligation is deemed extinguished where its performance is made impossible by circumstances not attributable to the obligor.

<sup>2</sup> In a bilateral contract, the obligor thus released is liable for the consideration already received pursuant to the provisions on unjust enrichment and loses his counter-claim to the extent it has not yet been satisfied.

<sup>3</sup> This does not apply to cases in which, by law or contractual agreement, the risk passes to the obligee prior to performance.

### **Art. 120**

F. Set-off  
I. Requirement  
1. In general

<sup>1</sup> Where two persons owe each other sums of money or performance of identical obligations, and provided that both claims have fallen due, each party may set off his debt against his claim.

<sup>2</sup> The debtor may assert his right of set-off even if the countervailing claim is contested.

<sup>3</sup> A time-barred claim may be set off provided that it was not time-barred at the time it became eligible for set-off.

### **Art. 121**

2. Under surety

A surety may refuse to satisfy the creditor to the extent that the principal debtor has a right of set-off.

### **Art. 122**

3. In contracts conferring rights on third parties

A person who has undertaken an obligation in favour of a third party may not set off that obligation against his own claims against said party.

- Art. 123**
4. Where the debtor is bankrupt
- 1 Where the debtor is bankrupt, his creditors may set off their claims, even if they are not due, against the claims that the adjudicated bankrupt holds against them.
- 2 The exclusion or challenge of set-off in the event of the debtor's bankruptcy is governed by the provisions of debt collection and bankruptcy law.
- Art. 124**
- II. Effect of set-off
- 1 A set-off takes place only if the debtor notifies the creditor of his intention to exercise his right of set-off.
- 2 Once this has occurred, to the extent that they cancel each other out, the claim and countervailing claim are deemed to have been satisfied as of the time they first became susceptible to set-off.
- 3 The special customs relating to commercial current accounts are unaffected.
- Art. 125**
- III. Exceptions
- The following obligations may not be discharged by set-off except with the creditor's consent:
1. obligations to restore or replace objects that have been deposited, unlawfully removed or retained in bad faith;
  2. obligations that by their very nature require actual performance to be rendered to the creditor, such as maintenance claims and salary payments that are absolutely necessary for the upkeep of the creditor and his family;
  3. obligations under public law in favour of the state authorities.
- Art. 126**
- IV. Waiver
- The debtor may waive his right of set-off in advance.
- Art. 127**
- G. Time limits  
I. Time limits  
1. Ten years
- All claims become time-barred after ten years unless otherwise provided by federal civil law.
- Art. 128**
2. Five years
- The following become time-barred after five years:
1. claims for agricultural and commercial rent and other rent, interest on capital and all other periodic payments;

2. claims in connection with delivery of foodstuffs, payments for board and lodging and hotel expenses;
- 3.<sup>39</sup> claims in connection with work carried out by tradesmen and craftsmen, purchases of retail goods, medical treatment, professional services provided by advocates, solicitors, legal representatives and notaries, and work performed by employees for their employers.

### Art. 129

3. Mandatory limitation periods

The limitation periods laid down under this Title may not be altered by contract.

### Art. 130

4. Start of limitation period  
a. In general

<sup>1</sup> The limitation period commences as soon as the debt is due.

<sup>2</sup> Where a debt falls due on notification, the limitation period commences on the first date on which such notice is admissible.

### Art. 131

b. For periodic obligations

<sup>1</sup> In the case of life annuities and similar periodic obligations, the limitation period for the principal claim commences on the date on which the first instalment in arrears was due.

<sup>2</sup> When the principal claim becomes time-barred, so too do all claims in respect of individual payments.

### Art. 132

5. Computation of limitation periods

<sup>1</sup> When computing limitation periods, the date on which the limitation period commences is not included and the period is not deemed to have expired until the end of its last day.

<sup>2</sup> In other respects the provisions governing computation of time limits for performance also apply to the time limits.

### Art. 133

II. Effect on accessory claims

When the principal claim becomes time-barred, so too do all claims for interest and other accessory claims.

<sup>39</sup> Amended by No II Art. 1 No 4 of the FA of 25 June 1971, in force since 1 Jan 1972 (AS 1971 1465; BBl 1967 II 241). See also the Final and Transitional Provisions of Title X, at the end of this Code.



**Art. 134**

III. Prevention  
and suspension  
of the limitation  
period

<sup>1</sup> The limitation period does not commence and, if it has begun, is suspended:

- 1.<sup>40</sup> in respect of the claims of children against their parents, until the children reach the age of majority;
- 2.<sup>41</sup> in respect of the claim of person lacking capacity of judgement against his or her carer, for the duration of the advance care directive;
3. in respect of the claims of spouses against each other, for the duration of the marriage;
- 3<sup>bis</sup>.<sup>42</sup> in respect of the claims of registered partners against each other, for the duration of the registered partnership;
- 4.<sup>43</sup> in respect of the claim of an employee against his employer with whom he shares a household, for the duration of the employment relationship;
5. for as long as the debtor has the usufruct of the claim;
6. for as long as the claim cannot be brought before a Swiss court.

<sup>2</sup> The limitation period begins or resumes at the end of the day on which the cause of prevention or suspension ceases to obtain.

<sup>3</sup> The specific provisions of debt collection and bankruptcy law are unaffected.

**Art. 135**

IV. Interruption  
of limitation  
period  
1. Grounds for  
interruption

The limitation period is interrupted:

1. if the debtor acknowledges the claim and in particular if he makes interest payments or part payments, gives an item in pledge or provides surety;
- 2.<sup>44</sup> by debt enforcement proceedings, an application for conciliation, submission of a statement of claim or defence to a court or arbitral tribunal, or a petition for bankruptcy.

<sup>40</sup> Amended by Annex No 1 to the FA of 20 March 2015 (Child Maintenance), in force since 1 Jan 2017 (AS **2015** 4299; BBl **2014** 529).

<sup>41</sup> Amended by Annex No 10 of the FA of 19 Dec 2008 (Adult Protection, Law of Persons and Law of Children), in force since 1 Jan 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>42</sup> Inserted by Annex No 11 to the AS **2005** 5097; BBl **2004** 4955 4965 of 18 June 2004, in force since 1 Jan 2007 (AS **2005** 5685; BBl **2003** 1288).

<sup>43</sup> Amended by No II Art. 1 No 5 of the FA of 25 June 1971, in force since 1 Jan 1972 (AS **1971** 1465; BBl **1967** II 241). See also the Final and Transitional Provisions of Title X, at the end of this Code.

<sup>44</sup> Amended by Annex 1 No II 5 of the Civil Procedure Code of 19 Dec 2008, in force since 1 Jan 2011 (AS **2010** 1739; BBl **2006** 7221).

2. Effect of interruption on co-obligors

### Art. 136

<sup>1</sup> Where the limitation period for one person who is jointly and severally liable for a debt or jointly liable in respect of an indivisible performance is interrupted, it is likewise interrupted for all other co-obligors.

<sup>2</sup> Where the limitation period for the principal debtor is interrupted, it is likewise interrupted for the surety.

<sup>3</sup> However, where the limitation period for the guarantor is interrupted, it is not interrupted for the principal debtor.

### Art. 137

3. Start of new limitation period  
a. In the event of acknowledgment or judgment

<sup>1</sup> A new limitation period commences as of the date of the interruption.

<sup>2</sup> If the claim has been acknowledged by public deed or confirmed by court judgment, the new limitation period is always ten years.

### Art. 138

b. By action of the creditor

<sup>1</sup> Where the limitation period has been interrupted by an application for conciliation, or the submission of a statement of claim or defence, a new limitation period commences when the dispute is settled before the relevant court.<sup>45</sup>

<sup>2</sup> Where the limitation period has been interrupted by debt enforcement proceedings, a new limitation period commences as of each step taken in the proceedings.

<sup>3</sup> Where the limitation period has been interrupted by a petition for bankruptcy, a new limitation period commences as of the time specified by bankruptcy law at which it once again becomes possible to assert the claim.

### Art. 139<sup>46</sup>

V. ...

### Art. 140

VI. Limitation of liens on chattels

The existence of a charge on chattels does not prevent a claim from becoming time-barred, although the fact of its becoming time-barred does not prevent the creditor from asserting his right under the charge.

<sup>45</sup> Amended by Annex 1 No II 5 of the Civil Procedure Code of 19 Dec 2008, in force since 1 Jan 2011 (AS 2010 1739; BBl 2006 7221).

<sup>46</sup> Repealed by Annex 1 No II 5 of the Civil Procedure Code of 19 Dec 2008, with effect from 1 Jan 2011 (AS 2010 1739; BBl 2006 7221).

**Art. 141**VII. Waiver of  
time limits

1 The time limits may not be waived in advance.

2 A waiver of the time limits by one jointly and severally liable debtor may not be invoked against the others.

3 The same applies to co-obligors of an indivisible debt and to the surety in the event of waiver by the principal debtor.

**Art. 142**

VIII. Assertion

The court may not consider the time limits of its own accord.

**Title Four: Special Relationships relating to Obligations****Section One: Joint and Several Obligations****Art. 143**A. Joint and  
several debtors  
I. Requirement

1 Debtors become jointly and severally liable for a debt by stating that each of them wishes to be individually liable for performance of the entire obligation.

2 Without such a statement of intent, debtors are joint and severally liable only in the cases specified by law.

**Art. 144**II. Relationship  
between creditor  
and debtor  
1. Effect  
a. Liability of the  
debtors

1 A creditor may at his discretion request partial performance of the obligation from each joint and several debtor or else full performance from any one of them.

2 All the debtors remain under the obligation until the entire claim has been redeemed.

**Art. 145**b. Objections by  
the debtors

1 A joint and several debtor may raise against the creditor only those objections that are based either on his personal relationship with the creditor or on the nature of or collective reason for the joint and several obligation.

2 Each joint and several debtor is liable to the others if he fails to raise the objections which all of them are entitled to raise.

**Art. 146**c. Action taken  
by individual  
debtors

Unless otherwise provided, a joint and several debtor must not take any action which might impair the position of his fellows.

2. Extinction of the joint and several obligation

### Art. 147

<sup>1</sup> Where one joint and several debtor satisfies the creditor by payment or set-off, the others are discharged to that extent.

<sup>2</sup> Where one joint and several debtor is released from liability without satisfaction of the creditor, such release does not benefit the others save to the extent justified by the circumstances or the nature of the obligation.

III. Relationship between joint and several debtors  
1. Participation

### Art. 148

<sup>1</sup> Unless the legal relationship between the joint and several debtors indicates otherwise, each of them assumes an equal share of the payment made to the creditor.

<sup>2</sup> A joint and several debtor who pays more than his fair share has recourse against the others for the excess.

<sup>3</sup> Amounts that cannot be recovered from one joint and several debtor must be borne in equal shares by the others.

2. Subrogation

### Art. 149

<sup>1</sup> A joint and several debtor with right of recourse against his fellow debtors is subrogated to the rights of the creditor to the extent the latter has been satisfied.

<sup>2</sup> The creditor is liable if he favours the legal position of one joint and several debtor to the detriment of the others.

B. Joint and several creditors

### Art. 150

<sup>1</sup> Multiple creditors become joint and several creditors where the debtor states that he wishes to grant each of them the right to receive full performance of the debt and in the cases prescribed by law.

<sup>2</sup> Performance made to one joint and several creditor discharges the debtor as against all of them.

<sup>3</sup> The debtor may choose which joint and several creditor he makes the payment to, provided none of them has initiated legal proceedings against him.

## Section Two: Conditional Obligations

A. Condition precedent  
I. In general

### Art. 151

<sup>1</sup> A contract is conditional if its binding nature is made dependent on the occurrence of an event that is not certain to happen.

<sup>2</sup> The contract takes effect as soon as this condition precedent occurs, unless the parties clearly intended otherwise.

### Art. 152

II. Before the condition occurs

<sup>1</sup> Until such time as the condition precedent occurs, the conditional obligor must refrain from any act which might prevent the due performance of his obligation.

<sup>2</sup> A conditional obligee whose rights are jeopardised is entitled to apply for the same protective measures as if his claim were unconditional.

<sup>3</sup> On fulfilment of the condition precedent, dispositions made before it occurred are void to the extent that they impair the effect of the condition precedent.

### Art. 153

III. Benefits enjoyed in the interim

<sup>1</sup> A creditor into whose possession a promised object has been delivered before the condition precedent occurred may, on fulfilment of the condition precedent, keep any benefits obtained from it in the interim.

<sup>2</sup> If the condition precedent fails to occur, he is obliged to return such benefits.

### Art. 154

B. Condition subsequent

<sup>1</sup> A contract whose termination is made dependent on the occurrence of an event that is not certain to happen lapses as soon as that condition is fulfilled.

<sup>2</sup> As a rule, there is no retroactive effect.

### Art. 155

C. Joint provisions  
I. Fulfilment of the condition

If the condition consists of an act by one of the parties and that act need not be carried out in person, it may also be carried out by the party's heirs.

### Art. 156

II. Prevention in bad faith

A condition is deemed fulfilled where one of the parties has prevented its fulfilment by acting in bad faith.

### Art. 157

III. Inadmissible conditions

Where a condition is attached with the intention of encouraging an unlawful or immoral act or omission, the conditional claim is void.

### Section Three: Earnest Money, Forfeit Money, Salary Deductions and Contractual Penalties

#### Art. 158

A. Earnest and  
forfeit money

<sup>1</sup> Earnest money paid on entering into a contract is deemed a mark of the party's intention to honour the contract rather than a forfeit.

<sup>2</sup> Unless otherwise stipulated by agreement or local custom, the earnest money is retained by the recipient without being deducted from his claim.

<sup>3</sup> Where a sum of forfeit money has been agreed, the party that paid the sum may withdraw from the contract by relinquishing it and the party that received it by returning twice the amount.

#### Art. 159<sup>47</sup>

B. ...

#### Art. 160

C. Contractual  
penalty

I. Rights of the  
creditor

1. Relation  
between penalty  
and contractual  
performance

<sup>1</sup> Where a penalty is promised for non-performance or defective performance of a contract, unless otherwise agreed, the creditor may only compel performance or claim the penalty.

<sup>2</sup> Where the penalty is promised for failure to comply with the stipulated time or place of performance, the creditor may claim the penalty in addition to performance provided he has not expressly waived such right or accepted performance without reservation.

<sup>3</sup> The foregoing does not apply if the debtor can prove that he has the right to withdraw from the contract by paying the penalty.

#### Art. 161

2. Relation  
between penalty  
and damage

<sup>1</sup> The penalty is payable even if the creditor has not suffered any loss or damage.

<sup>2</sup> Where the loss or damage suffered exceeds the penalty amount, the creditor may claim further compensation only if he can prove that the debtor was at fault.

#### Art. 162

3. Forfeiture of  
part payments

<sup>1</sup> Any agreement that part payments are forfeited to the creditor in the event the contract is terminated shall be determined in accordance with the provisions governing contractual penalties.

<sup>47</sup> Repealed by No II Art. 6 No 1 of the FA of 25 June 1971, with effect from 1 Jan 1972 (AS 1971 1465; BBl 1967 II 241). See also the Final and Transitional Provisions of Title X, at the end of this Code.

2 ...<sup>48</sup>

### Art. 163

II. Amount,  
nullity and  
reduction of the  
penalty

<sup>1</sup> The parties are free to determine the amount of the contractual penalty.

<sup>2</sup> The penalty may not be claimed where its purpose is to reinforce an unlawful or immoral undertaking or, unless otherwise agreed, where performance has been prevented by circumstances beyond the debtor's control.

<sup>3</sup> At its discretion, the court may reduce penalties that it considers excessive.

## Title Five: Assignment of Claims and Assumption of Debt

### Art. 164

A. Assignment  
of claims  
I. Requirements  
1. Voluntary  
assignment  
a. Admissibility

<sup>1</sup> A creditor may assign a claim to which he is entitled to a third party without the debtor's consent unless the assignment is forbidden by law or contract or prevented by the nature of the legal relationship.

<sup>2</sup> The debtor may not object to the assignment on the grounds that it was excluded by agreement against any third party who acquires the claim in reliance on a written acknowledgement of debt in which there is no mention of any prohibition of assignment.

### Art. 165

b. Form of the  
contract

<sup>1</sup> An assignment is valid only if done in writing.

<sup>2</sup> No particular form is required for an undertaking to enter into an assignment agreement.

### Art. 166

2. Assignment  
by law or court  
order

Where legal provisions or a court judgment require a claim to be assigned to another person, the assignment is effective towards third parties without need for any particular form or even for a statement of intent by the former creditor.

<sup>48</sup> Repealed by Annex 2 No II 1 to the FA of 23 March 2001 on Consumer Credit, with effect from 1 Jan 2003 (AS 2002 3846; BBl 1999 3155).

II. Effect of assignment

1. Position of the debtor

a. Payment made in good faith

**Art. 167**

Where, before the assignment has been brought to his attention by the assignor or the assignee, the debtor makes payment in good faith to his former creditor or, in the case of multiple assignments, to a subsequent assignee who acquired the claim, he is validly released from his obligation.

b. Refusal of payment and deposit

**Art. 168**

<sup>1</sup> In the event of dispute as to entitlement, the debtor may refuse payment and discharge his obligation by depositing the payment with the court.

<sup>2</sup> He makes payment at his own risk if he does so with knowledge of the dispute.

<sup>3</sup> Where legal action is pending and the debt is due, each party may require the debtor to deposit the payment with the court.

c. Objections raised by the debtor

**Art. 169**

<sup>1</sup> Any objection that could have been made to the assignor's claim may also be made to the assignee if it applied at the time the debtor first learned of the assignment.

<sup>2</sup> If the debtor held a countervailing claim that was not yet due at that time, he may nonetheless set it off against the assigned claim provided it did not fall due any later than the assigned claim.

2. Transfer of preferential and accessory rights, documents and evidence

**Art. 170**

<sup>1</sup> The assignment of a claim includes all preferential and accessory rights except those that are inseparable from the person of the assignor.

<sup>2</sup> The assignor is bound to surrender to the assignee the legal document pertaining to the debt together with all available evidence thereof and to furnish him with all information necessary to assert the claim.

<sup>3</sup> Arrears of interest are presumed assigned with the main debt.

3. Warranty  
a. In general

**Art. 171**

<sup>1</sup> Where assignment is made for valuable consideration, the assignor warrants that the claim exists at the time of assignment.

<sup>2</sup> However, he does not warrant that the debtor is solvent unless he has undertaken to do so.

<sup>3</sup> Where there is no valuable consideration for the assignment, the assignor does not even warrant that the claim exists.



**Art. 172**

b. In the case of assignment by way of satisfaction

Where a creditor has assigned his claim in payment without fixing the amount at which the claim should be credited, the assignee need credit only the amount that he actually receives from the debtor or would have been able to obtain by exercising all due diligence.

**Art. 173**

c. Scope of liability

<sup>1</sup> The assignor is liable under warranty only for the valuable consideration received plus interest and in addition for the costs of the assignment and of any unsuccessful proceedings against the debtor.

<sup>2</sup> Where a claim is assigned by operation of law, the previous creditor warrants neither the existence of the claim nor the solvency of the debtor.

**Art. 174**

III. Special provisions

Where the law envisages special provisions governing the assignment of claims, these are unaffected.

**Art. 175**

B. Assumption of debt  
I. Debtor and debt acquirer

<sup>1</sup> A person who promises to answer for the debt of another assumes an obligation to release the debtor from his obligation either by satisfying the creditor or by taking the debtor's place with the consent of the creditor.

<sup>2</sup> The debtor may not compel performance of the obligation by the party assuming the debt until the debtor has discharged his obligations under the debt assumption contract.

<sup>3</sup> If the previous debtor is not released from his debt, he may request that the new debtor furnish security.

**Art. 176**

II. Contract between debt acquirer and creditor  
1. Offer and acceptance

<sup>1</sup> The accession of the debt acquirer to the debt relationship in lieu of and with the release of the previous debtor is effected by means of a contract between the debt acquirer and the creditor.

<sup>2</sup> An offer to enter into the contract may consist of notification of the creditor that the debt is to be assumed. Notification must be made either by the debt acquirer or, on his authority, by the previous debtor.

<sup>3</sup> The creditor's acceptance may be express or implied by the circumstances and is presumed once the creditor unreservedly takes receipt of a payment from the debt acquirer or consents to some other act performed by him in the capacity of debtor.

**Art. 177**

2. Lapse of offer <sup>1</sup> The creditor may declare his acceptance at any time, but the debt acquirer and the former debtor may set the creditor a time limit for acceptance and where this expires without communication from the creditor, he is deemed to have refused the offer.

<sup>2</sup> If the creditor agrees some other debt assumption arrangement before the offer has been accepted and the new prospective debt acquirer has also made an offer to the creditor, the party that made the previous offer is no longer bound thereby.

**Art. 178**

III. Effect of change of debtor <sup>1</sup> The rights that are accessory to the debt remain unaffected by the change of debtor save to the extent that they are inseparable from the person of the previous debtor.

1. Accessory rights

<sup>2</sup> However, pledges and sureties provided by third parties remain in place in favour of the creditor only provided the pledgor or surety has consented to the assumption of the debt.

**Art. 179**

2. Objections <sup>1</sup> Any defences arising from the debt relationship are available to the new debtor as they were to the former.

<sup>2</sup> The new debtor may not invoke the defences personally available to the old debtor against the creditor, unless otherwise provided in the contract with the creditor.

<sup>3</sup> Where the debt acquirer has defences arising against the debtor from the legal relationship underlying the assumption of debt, these may not be invoked against the creditor.

**Art. 180**

IV. Failure of debt assumption contract <sup>1</sup> In the event of the failure of the debt assumption contract, the previous debtor's obligation is revived with all accessory rights, subject to the rights of bona fide third parties.

<sup>2</sup> The creditor may also claim damages from the would-be debt acquirer for any damage suffered as a result of the loss of security previously obtained or for similar reasons, unless the would-be debt acquirer can prove that he was in no way to blame for the failure of the debt assumption contract or the damage caused to the creditor.

**Art. 181**

V. Assignment of assets or a business with assets and liabilities <sup>1</sup> A person to whom assets or a business with assets and liabilities are assigned automatically becomes liable to the creditors of the debts

encumbering such assets or business on notification of the assignment to the creditors by him or by publication in official journals.

<sup>2</sup> However, the previous debtor remains jointly and severally liable with the new debtor for three years, commencing on the date of notification or publication in the case of claims already due and on the maturity date in the case of claims falling due subsequently.<sup>49</sup>

<sup>3</sup> In other respects, an assumption of debt of this kind has the same effect as the assumption of an individual debt.

<sup>4</sup> The takeover by assignment of assets or businesses of commercial enterprises, cooperatives, associations, foundations or sole proprietorships registered in the commercial register is governed by the provisions of the Mergers Act of 3 October 2003<sup>50,51</sup>

#### **Art. 182**<sup>52</sup>

VI. ...

#### **Art. 183**

VII. In relation to division of estate and land purchase

The special provisions governing assumption of debt when dividing estates or disposing of pledged immovable property are unaffected.

## **Division Two: Types of Contractual Relationship**

### **Title Six: Sale and Exchange**

#### **Section One: General Provisions**

#### **Art. 184**

A. Rights and obligations of the parties in general

<sup>1</sup> A contract of sale is a contract whereby the seller undertakes to deliver the item sold and transfer ownership of it to the buyer in return for the sale price, which the buyer undertakes to pay to the seller.

<sup>2</sup> Unless otherwise provided by agreement or custom, the seller and the buyer are obliged to discharge their obligations simultaneously *quid pro quo*.

<sup>49</sup> Amended by Annex No 2 to the Mergers Act of 3 Oct. 2003, in force since 1 July 2004 (AS 2004 2617; BBl 2000 4337).

<sup>50</sup> SR 221.301

<sup>51</sup> Inserted by Annex No 2 to the Mergers Act of 3 Oct. 2003 (AS 2004 2617; BBl 2000 4337). Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>52</sup> Repealed by Annex No 2 to the Mergers Act of 3 Oct. 2003, with effect from 1 July 2004 (AS 2004 2617; BBl 2000 4337).

<sup>3</sup> The price is deemed sufficiently determined where it can be determined from the circumstances.

### Art. 185

B. Benefits and risks

<sup>1</sup> The benefit and risk of the object pass to the buyer on conclusion of the contract, except where otherwise agreed or dictated by special circumstance.

<sup>2</sup> Where the object sold is defined only in generic terms, the seller must select the particular item to be delivered and, if it is to be shipped, must hand it over for dispatch.

<sup>3</sup> In a contract subject to a condition precedent, benefit and risk of the object do not pass to the buyer until the condition has been fulfilled.

### Art. 186

C. Reservation of cantonal law

Cantonal law may limit or exclude the right to bring claims in connection with retail sales of alcoholic beverages, including hotel bills.

## Section Two: The Chattel Sale

### Art. 187

A. Object

<sup>1</sup> Any sale in which the object is not land, property or a right in rem entered in the land register is a chattel sale.

<sup>2</sup> Where constituent parts of land, such as crops, architectural salvage materials or quarry products, are separated therefrom for transfer to the acquirer, their sale constitutes a chattel sale.

### Art. 188

B. Seller's obligations

I. Transfer

1. Transfer costs

Unless otherwise provided by agreement or custom, the seller bears the costs of transfer and in particular those of measuring and weighing, while the buyer bears those of documentation and receipt.

### Art. 189

2. Transport costs

<sup>1</sup> Unless otherwise provided by agreement or custom, if the object sold must be transported to a place other than the place of performance, the buyer bears the costs of such transport.

<sup>2</sup> The seller is presumed to have borne the transport costs where free delivery has been agreed.

<sup>3</sup> Where delivery free of shipping costs and duties has been agreed, the seller is deemed to have assumed the export, transit and import duties

payable during transport but not the consumer tax levied on receipt of the object.

### Art. 190

3. Delivery default

a. Withdrawal from commercial transactions

<sup>1</sup> Where in commercial transactions the contract specifies a time limit for delivery and the seller is in default, the presumption is that the buyer will forego delivery and claim damages for non-performance.

<sup>2</sup> However, if the buyer prefers to demand delivery, he must inform the seller without delay on expiry of the time limit.

### Art. 191

b. Liability for and computation of damages

<sup>1</sup> A seller who fails to discharge his contractual obligation is liable for the resultant loss or damage to the buyer.

<sup>2</sup> The buyer in a commercial transaction is entitled to compensation of the difference between the sale price and the price he has paid in good faith to replace the object that was not delivered to him.

<sup>3</sup> In the case of goods with a market or stock exchange price, the buyer need not buy the replacement object but is entitled to claim as damages the difference between the contractual sale price and the market price at the time of performance.

### Art. 192

II. Warranty of title

1. Warranty obligation

<sup>1</sup> The seller is obliged to transfer the purchased goods to the buyer free from any rights enforceable by third parties against the buyer that already exist at the time the contract is concluded.

<sup>2</sup> Where on conclusion of the contract the buyer was aware of the existence of such rights, the seller is not bound unless by any express warranty given.

<sup>3</sup> Any agreement to exclude or limit the warranty obligation is void if the seller has intentionally omitted to mention the right of a third party.

### Art. 193<sup>53</sup>

2. Procedure  
a. Third-party notice

<sup>1</sup> The requirements for and effects of the third-party notice are governed by the CPC<sup>54</sup>.

<sup>2</sup> In the event of failure to serve the third-party notice for reasons not attributable to the seller, he is released from his warranty obligation to the extent that he can prove that the outcome would have been more favourable had the third-party notice been served promptly.

<sup>53</sup> Amended by Annex 1 No II 5 of the Civil Procedure Code of 19 Dec 2008, in force since 1 Jan 2011 (AS 2010 1739; BBl 2006 7221).

<sup>54</sup> SR 272

b. Surrender of object without court decision

### Art. 194

<sup>1</sup> The seller remains subject to the warranty obligation even if the buyer has in good faith acknowledged the right of a third party without waiting for a court decision or if he has agreed to submit to arbitration, provided that the seller was warned of the arbitration proceedings in good time but declined an invitation to engage therein.

<sup>2</sup> The same applies if the buyer proves that he was compelled to surrender the object.

3. Rights of the buyer  
a. Full dispossession

### Art. 195

<sup>1</sup> In the case of full dispossession, the contract of sale is deemed terminated and the buyer has the right to claim:

1. restitution of the price paid, with interest, less the value of any fruits the buyer has obtained or neglected to obtain from the object and other benefits derived therefrom;
2. reimbursement of his expenditures on the object, to the extent this cannot be obtained from the third party with the superior right;
3. reimbursement of all judicial and extrajudicial costs arising from the proceedings, apart from those he would have avoided by serving third-party notice on the seller;
4. compensation for all other damage directly caused by the dispossession.

<sup>2</sup> The seller is also obliged to make good any further loss suffered by the buyer unless the seller can prove that he is not at fault.

b. Partial dispossession

### Art. 196

<sup>1</sup> Where the buyer is dispossessed of only part of the purchased object or it is encumbered with a charge in rem for which the seller is guarantor, the buyer may not seek termination of the contract of sale but may only claim damages for being thus dispossessed.

<sup>2</sup> However, where in the circumstances there is cause to presume that he would not have entered into the contract if he had foreseen such a partial dispossession, he has the right to request its termination.

<sup>3</sup> In this case, he must return to the seller that part of the item of which he has not been dispossessed together with the benefits he obtained from it in the interim.

**Art. 196<sup>a55</sup>**

c. Objects of cultural heritage

In the case of objects of cultural heritage within the meaning of Article 2 paragraph 1 of the Cultural Property Transfer Act of 20 June 2003<sup>56</sup>, actions for breach of warranty of title become time-barred one year after the buyer discovered the defect of title but in any event 30 years after the contract was concluded.

**Art. 197**

III. Warranty of quality and fitness

1. Object of the warranty  
a. In general

<sup>1</sup>The seller is liable to the buyer for any breach of warranty of quality and for any defects that would materially or legally negate or substantially reduce the value of the object or its fitness for the designated purpose.

<sup>2</sup> He is liable even if he was not aware of the defects.

**Art. 198**

b. In livestock trading

There is no warranty obligation in sales of livestock (horses, donkeys, mules, cattle, sheep, goats or pigs) unless the seller has given express warranty in writing to the buyer or has intentionally misled the buyer.

**Art. 199**

2. Exclusion of warranty

Any agreement to exclude or limit the warranty obligation is void if the seller has fraudulently concealed the failure to comply with warranty from the buyer.

**Art. 200**

3. Defects known to the buyer

<sup>1</sup> The seller is not liable for defects known to the buyer at the time of purchase.

<sup>2</sup> He is not liable for defects that any normally attentive buyer should have discovered unless he assured the buyer that they do not exist.

**Art. 201**

4. Notice of defects  
a. In general

<sup>1</sup> The buyer must inspect the condition of the purchased object as soon as feasible in the normal course of business and, if he discovers defects for which the seller is liable under warranty, must notify him without delay.

<sup>2</sup> Should he fail to do so, the purchased object is deemed accepted except in the case of defects that would not be revealed by the customary inspection.

<sup>55</sup> Inserted by Art. 32 No 2 of the Cultural Property Transfer Act of 20 June 2003, in force since 1 June 2005 (AS **2005** 1869; BBl **2002** 535).

<sup>56</sup> SR **444.1**

<sup>3</sup> Where such defects come to light subsequently, the seller must be notified immediately, failing which the object will be deemed accepted even in respect of such defects.

#### **Art. 202**

b. In livestock trading

<sup>1</sup> Where in a sale of livestock a written assurance includes no time limit and does not warrant that an animal is pregnant, the seller is not liable to the buyer unless a defect is discovered and notified within nine days of delivery or of the notice of default in taking delivery and an application is made to the competent authority within the same time limit to have the animal examined by experts.

<sup>2</sup> The court evaluates the experts' report at its discretion.

<sup>3</sup> In other respects the procedure is governed by regulations enacted by the Federal Council.

#### **Art. 203**

5. Intentional deceit

Where the seller has wilfully misled the buyer, liability for breach of warranty is not limited by any failure on the buyer's part to give prompt notice of defects.

#### **Art. 204**

6. Remote sale and purchase

<sup>1</sup> A buyer who complains that an object sent from another place is defective is obliged to place it in temporary storage, provided the seller has no representative in the place in which it was received, and cannot simply return it to the seller.

<sup>2</sup> The buyer is obliged to have the condition of the object duly and promptly witnessed, failing which he will bear the burden of proving that the alleged defects already existed when he took receipt of the object.

<sup>3</sup> Where there is a risk that the object will rapidly deteriorate, the buyer has the right and, should the interests of the seller so require, the obligation to arrange its sale with the assistance of the competent authority of the place where the object is located, but must notify the seller of such sale as soon as possible to avoid rendering himself liable in damages.

#### **Art. 205**

7. Types of action  
a. Rescission or reduction

<sup>1</sup> In claims for breach of warranty of quality and fitness, the buyer may sue either to rescind the contract of sale for breach of warranty or to have the sale price reduced by way of compensation for the decrease in the object's value.



<sup>2</sup> Even where the buyer has brought action for rescission the court is free to order a reduction in the price of the object if it does not consider rescission justified by the circumstances.

<sup>3</sup> If the decrease in the object's value is equal to the sale price, the buyer may only sue for rescission.

### Art. 206

b. Substitute performance

<sup>1</sup> Where the contract of sale is for delivery of a specified quantity of fungibles, the buyer may choose to bring action either for rescission or for a reduction in the sale price or to request other acceptable goods of the same kind.

<sup>2</sup> Where the purchased objects have not been sent from another place, the seller may discharge his obligation to the buyer by immediately delivering acceptable items of the same kind and making good any loss or damage the buyer has suffered.

### Art. 207

c. Rescission when the object is destroyed

<sup>1</sup> Action for rescission of the contract of sale may be brought if the object has been destroyed as a result of its defects or by accident.

<sup>2</sup> In such cases the buyer must return only that which remains of the object.

<sup>3</sup> If the object is destroyed through the fault of the buyer or has been sold on or transformed by him, his only claim is for compensation for the decrease in value.

### Art. 208

8. Rescission of the contract of sale  
a. In general

<sup>1</sup> In the event of rescission of the contract of sale the buyer must return the object to the seller together with any benefits derived from it in the interim.

<sup>2</sup> The seller must reimburse to the buyer the sale price paid together with interest and, in accordance with the provisions governing full dispossession, compensation for litigation costs, expenses and the loss or damage incurred by the buyer as a result of the delivery of defective goods.

<sup>3</sup> The seller is obliged to compensate the buyer for any further loss or damage unless he can prove that no fault is attributable to him.

### Art. 209

b. For sales of batches or sets of objects

<sup>1</sup> Where the sale involves a batch or set of objects of which only some are defective, action for rescission may be brought only in respect of the defective items.

<sup>2</sup> However, where the defective items cannot be separated from the unflawed items without substantial prejudice to the buyer or the seller, rescission of the contract of sale must extend to the entire batch or set.

<sup>3</sup> Rescission in respect of the main sale object necessarily involves rescission in respect of all accessory objects even if they are priced separately, whereas rescission in respect of accessory objects does not extend to the main object.

**Art. 210<sup>57</sup>**

9. Time limits

<sup>1</sup> An action for breach of warranty of quality and fitness becomes time-barred two years after delivery of the object to the buyer, even if he does not discover the defects until later, unless the seller has assumed liability under warranty for a longer period.

<sup>2</sup> The period amounts to five years where defects in an object that has been incorporated in an immovable work in a manner consistent with its nature and purpose have caused the work to be defective.

<sup>3</sup> In the case of cultural property within the meaning of Article 2 paragraph 1 of the Cultural Property Transfer Act of 20 June 2003<sup>58</sup>, actions for breach of warranty of quality and fitness become time-barred one year after the buyer discovered the defect but in any event 30 years after the contract was concluded.

<sup>4</sup> An agreement to reduce the limitation period is null and void if:

- a. the limitation period is reduced to less than two years, or less than one year in the case of second-hand goods;
- b. the object is intended to be used by the buyer or his or her family; and
- c. the seller is acting in the course of his or her professional or commercial activities.

<sup>5</sup> The defence of defective goods remains available to the buyer provided he has notified the seller within the limitation period.

<sup>6</sup> The seller may not invoke the limitation period if it is proved that he wilfully misled the buyer. The foregoing does not apply to the 30-year period under paragraph 3.

<sup>57</sup> Amended by No I of the FA of 16 March 2012 (Limitation Periods for Guarantee Claims. Extension and Coordination), in force since 1 Jan 2013 (AS 2012 5415; BBl 2011 2889 3903).

<sup>58</sup> SR 444.1

**Art. 211**

C. Obligations of the buyer  
I. Payment of the sale price and acceptance of the object

<sup>1</sup> The buyer has an obligation to pay the price in accordance with the terms of the contract and to accept the sale object provided it is offered to him by the seller as contractually agreed.

<sup>2</sup> Unless otherwise provided by agreement or custom, such acceptance must take place immediately.

**Art. 212**

II. Fixing the price

<sup>1</sup> Where the buyer places a firm order without indicating the sale price, the price is presumed to be the average current market price at the place of performance.

<sup>2</sup> Where the price is based on the weight of the goods, the weight of the packaging (tare) is deducted.

<sup>3</sup> The foregoing does not apply to special commercial customs whereby the gross weight of certain resale merchandise is reduced by a set amount or percentage or the price is based on the gross weight including packaging.

**Art. 213**

III. Time when price falls due, interest

<sup>1</sup> The price falls due as soon as the property passes into the buyer's possession, unless some other juncture is agreed.

<sup>2</sup> Regardless of the provision governing default on expiry of a specified time limit, interest accrues on the sale price even if no reminder is issued where such practice is customary or the buyer may derive fruits or other benefits from the purchased object.

**Art. 214**

IV. Buyer in default  
1. Seller's right of withdrawal

<sup>1</sup> Where the property is to be delivered against advance payment of the price in full or in instalments and the buyer is in default on such payment, the seller is entitled to withdraw from the contract without further formality.

<sup>2</sup> However, if he intends to exercise this right he must notify the buyer immediately.

<sup>3</sup> Where the purchased object has passed into the buyer's possession prior to payment, the seller may withdraw from the contract on the grounds that the buyer is in default and demand the return of the object only if he has expressly reserved the right to do so.

**Art. 215**

2. Liability for and computation of damages

<sup>1</sup> Where the buyer in a commercial transaction fails to discharge his payment obligation, the seller is entitled to compensation for the

difference between the sale price and the price at which he has subsequently sold the object in good faith.

<sup>2</sup> In the case of goods with a market or stock exchange price, the seller is entitled to claim as damages the difference between the contractual sale price and the market price at the time of performance without needing to sell the object on.

### Section Three: Sale of Immovable Property

#### Art. 216

A. Formal requirements

<sup>1</sup> A contract for the sale of immovable property is valid only if done as a public deed.

<sup>2</sup> A preliminary contract and an agreement conferring a right of pre-emption, purchase or repurchase in relation to immovable property is valid only if done as a public deed.<sup>59</sup>

<sup>3</sup> An agreement conferring a right of pre-emption without fixing a price is valid if done in writing.<sup>60</sup>

#### Art. 216a<sup>61</sup>

Abis, Duration and priority notice

Rights of pre-emption or repurchase may be agreed for a maximum duration of 25 years and rights of purchase for a maximum of 10 years, and they may be entered under priority notice in the land register.

#### Art. 216b<sup>62</sup>

Ater, Inheritance and assignment

<sup>1</sup> Unless otherwise agreed, contractual rights of pre-emption, purchase and repurchase may be inherited but not assigned.

<sup>2</sup> Where assignment is permitted by contractual agreement, it is subject to the same formal requirements as apply to the establishment of the right.

<sup>59</sup> Amended by No II of the FA of 4 Oct. 1991, in force since 1 Jan 1994 (AS 1993 1404; BBl 1988 III 889).

<sup>60</sup> Amended by No II of the FA of 4 Oct. 1991, in force since 1 Jan 1994 (AS 1993 1404; BBl 1988 III 889).

<sup>61</sup> Inserted by No II of the FA of 4 Oct. 1991, in force since 1 Jan 1994 (AS 1993 1404; BBl 1988 III 889).

<sup>62</sup> Inserted by No II of the FA of 4 Oct. 1991, in force since 1 Jan 1994 (AS 1993 1404; BBl 1988 III 889).

**Art. 216<sup>e63</sup>**

Aquater. Rights of pre-emption  
I. Pre-emption events

<sup>1</sup> A right of pre-emption may be exercised on the sale of the immovable property or any other legal transaction economically equivalent to a sale (pre-emption event).

<sup>2</sup> In particular, the following are not pre-emption events: allocation to an heir in the division of an estate, forced sale, or acquisition in performance of public duties.

**Art. 216<sup>d64</sup>**

II. Effect of pre-emption, conditions

<sup>1</sup> The seller must inform persons with a right of pre-emption of the conclusion and content of any contract of sale entered into.

<sup>2</sup> Where the contract of sale is terminated after the right of pre-emption has been exercised or if necessary permission is refused for reasons pertaining to the person of the buyer, such termination or refusal has no effect on the person to whom the right of pre-emption accrues.

<sup>3</sup> Unless the pre-emption agreement provides otherwise, the person with the right of pre-emption may purchase the property on the conditions agreed by the seller with the third party.

**Art. 216<sup>e65</sup>**

III. Exercise, forfeiture

A person wishing to exercise his right of pre-emption must give notice of his intention within three months to the seller or, if it is entered in the land register, to the owner. This time limit commences on the day on which the person with the right of pre-emption became aware of the conclusion and content of the contract of sale.

**Art. 217**

B. Conditional purchase and reservation of ownership

<sup>1</sup> Conditional purchases of immovable property are not entered in the land register until the condition has been fulfilled.

<sup>2</sup> A reservation of ownership may not be entered in the land register.

**Art. 218<sup>66</sup>**

C. Agricultural properties

The Federal Act of 4 October 1991<sup>67</sup> on Rural Land Rights applies to the sale of agricultural properties.

<sup>63</sup> Inserted by No II of the FA of 4 Oct. 1991, in force since 1 Jan 1994 (AS 1993 1404; BBl 1988 III 889).

<sup>64</sup> Inserted by No II of the FA of 4 Oct. 1991, in force since 1 Jan 1994 (AS 1993 1404; BBl 1988 III 889).

<sup>65</sup> Inserted by No II of the FA of 4 Oct. 1991, in force since 1 Jan 1994 (AS 1993 1404; BBl 1988 III 889).

<sup>66</sup> Amended by Art. 92 No 2 of the FA of 4 Oct. 1991 on Rural Land Rights, in force since 1 Jan 1994 (AS 1993 1410; BBl 1988 III 953).

<sup>67</sup> SR 211.412.11

**Art. 219**

D. Warranty

<sup>1</sup> Unless otherwise agreed, the seller of a property must compensate the buyer if it is not of the size indicated in the contract of sale.

<sup>2</sup> Where the property is not of the size entered in the land register based on an official survey, the seller must compensate the buyer only where he gave express warranty to that effect.

<sup>3</sup> The warranty obligation in respect of defects in a building becomes time-barred five years after ownership is acquired.

**Art. 220**

E. Benefits and risks

Where the agreement stipulates a date on which the buyer is to take possession of the property, the presumption is that the associated benefits and risks do not pass to the buyer until that date.

**Art. 221**

F. Reference to chattel sale

In other respects the provisions governing chattel sale apply *mutatis mutandis* to the sale and purchase of land.

**Section Four: Special Types of Sale****Art. 222**

A. Sale by sample

<sup>1</sup> In a sale by sample, the person to whom the sample was entrusted is not obliged to prove that the sample he presented is identical with the one received; his personal assurance to the court is sufficient, even where the sample presented has altered in form since delivery, provided that such alteration was a necessary consequence of the examination made of the sample.

<sup>2</sup> In any event the other party is entitled to prove that the sample is not the same one.

<sup>3</sup> If the sample has been spoiled or been destroyed while in the possession of the buyer, even if he was not at fault, the onus is not on the seller to prove that the object conforms with the sample, but on the buyer to prove the contrary.

**Art. 223**B. Sale on approval or inspection  
I. Effect

<sup>1</sup> In a sale on approval or inspection, the buyer is free to accept or refuse the object.

<sup>2</sup> Until it is accepted, the seller remains its owner even if it has passed into the buyer's possession.

**Art. 224**

II. Inspection on  
the seller's  
premises

<sup>1</sup> Where the object is to be inspected on the premises of the seller, he is released from his obligation if the buyer fails to accept the object within the agreed or customary time limit.

<sup>2</sup> In the absence of any such time limit the seller may, after an appropriate interval, call on the buyer to declare whether he accepts the object, and the seller is released from his obligation if the buyer fails to make such declaration immediately on request.

**Art. 225**

III. Inspection on  
the buyer's  
premises

<sup>1</sup> Where the object has been delivered to the buyer prior to inspection, the sale is deemed to have been approved if the buyer neither declares that he rejects the object nor returns it within the agreed or customary time limit or, in the absence of any such time limit, immediately on demand by the seller.

<sup>2</sup> The sale is similarly treated as completed, if the buyer pays the whole or part of the price without reservation or if he deals with the property otherwise than was necessary for its inspection.

**Art. 226<sup>68</sup>****Art. 226a-226d<sup>69</sup>**

C. ...

**Art. 226e<sup>70</sup>****Art. 226f-226k<sup>71</sup>****Art. 226l<sup>72</sup>****Art. 226m<sup>73</sup>**

<sup>68</sup> Repealed by No I of the FA of 23 March 1962, with effect from 1 Jan 1963 (AS 1962 1047; BBl 1960 I 523).

<sup>69</sup> Inserted by No I of the FA of 23 March 1962 (AS 1962 1047; BBl 1960 I 523). Repealed by Annex 2 No II 1 to the FA of 23 March 2001 on Consumer Credit, with effect from 1 Jan 2003 (AS 2002 3846; BBl 1999 3155).

<sup>70</sup> Inserted by No I of the FA of 23 March 1962 (AS 1962 1047; BBl 1960 I 523). Repealed by No I of the FA of 14 Dec 1990, with effect from 1 July 1991 (AS 1991 974; BBl 1989 III 1233, 1990 I 120).

<sup>71</sup> Inserted by No I of the FA of 23 March 1962 (AS 1962 1047; BBl 1960 I 523). Repealed by Annex 2 No II 1 to the FA of 23 March 2001 on Consumer Credit, with effect from 1 Jan 2003 (AS 2002 3846; BBl 1999 3155).

<sup>72</sup> Inserted by No I of the FA of 23 March 1962 (AS 1962 1047; BBl 1960 I 523). Repealed by Annex No 5 to the Civil Jurisdiction Act of 24 March 2000, with effect from 1 Jan 2001 (AS 2000 2355; BBl 1999 2829).

**Art. 227<sup>74</sup>****Art. 227a–227i<sup>75</sup>****Art. 228<sup>76</sup>****Art. 229**

D. Auctions  
I. Conclusion of  
the purchase

<sup>1</sup> At a compulsory auction, a contract of sale is concluded when the official auctioneer knocks the object down to the highest bidder.

<sup>2</sup> In the case of a voluntary auction that has been publicly announced and is open to all bidders, a contract of sale is concluded when the seller accepts the bid of the highest bidder.

<sup>3</sup> Unless the seller has expressed some other intention, the auctioneer is deemed to have the authority to knock the object down to the highest bidder.

**Art. 230**

II. Avoidance

<sup>1</sup> Any interested party may within ten days bring a claim for avoidance in respect of an auction whose outcome has been influenced by unlawful or immoral means.

<sup>2</sup> In the case of a compulsory auction, the avoidance claim must be brought before the supervisory authority, and in all other cases before the court.

**Art. 231**

III. Binding  
nature of bids at  
auction

1. In general

<sup>1</sup> A bidder is bound by his offer according to the auction terms and conditions.

<sup>2</sup> Unless these provide otherwise, he is released from his obligation if a higher bid is made or if his own bid is not accepted immediately after the usual call has been made.

<sup>73</sup> Inserted by No I of the FA of 23 March 1962 (AS 1962 1047; BBl 1960 I 523). Repealed by Annex 2 No II 1 to the FA of 23 March 2001 on Consumer Credit, with effect from 1 Jan 2003 (AS 2002 3846; BBl 1999 3155).

<sup>74</sup> Repealed by No I of the FA of 23 March 1962, with effect from 1 Jan 1963 (AS 1962 1047; BBl 1960 I 523).

<sup>75</sup> Inserted by No I of the FA of 23 March 1962 (AS 1962 1047; BBl 1960 I 523). Repealed by No I of the FA of 13 Dec 2013 (Repeal of the Provisions on Advance Payment Agreements), with effect from 1 July 2014 (AS 2014 869; BBl 2013 4631 5793).

<sup>76</sup> Repealed by No I of the FA of 13 Dec 2013 (Repeal of the Provisions on Advance Payment Agreements), with effect from 1 July 2014 (AS 2014 869; BBl 2013 4631 5793).



**Art. 232**

2. Immovable property

<sup>1</sup> In the case immovable property, the highest bid must be accepted or refused at the auction itself.

<sup>2</sup> Any condition whereby the bidder is bound to maintain his bid after the auction is void, other than in the case of compulsory auctions or sales of land or buildings that require official approval.

**Art. 233**

IV. Cash payment

<sup>1</sup> The successful bidder must pay in cash unless the auction terms and conditions provide otherwise.

<sup>2</sup> The seller may immediately withdraw from the transaction if payment is not tendered in cash or in accordance with the auction terms and conditions.

**Art. 234**

V. Warranty

<sup>1</sup> Sale at compulsory auction is without warranty, apart from special assurances given or where the bidders are intentionally deceived.

<sup>2</sup> The successful bidder acquires the object in the condition and with the attendant rights and encumbrances indicated in the public registers or the lot description and/or those that exist by operation of law.

<sup>3</sup> In sales at voluntary public auction, the seller has the same liability as in any other sale, but in the lot description he may disclaim any warranty obligation with the exception of liability for intentional deceit.

**Art. 235**

VI. Transfer of ownership

<sup>1</sup> The successful bidder for a chattel acquires title to it as soon as it is knocked down to him, whereas ownership of immovable property is not transferred until the entry is made in the land register.

<sup>2</sup> The official auctioneers immediately notify the land registry of the sale at auction by reference to the formal auction record.

<sup>3</sup> The provisions governing acquisition of ownership at compulsory auction are reserved.

**Art. 236**

VII. Cantonal provisions

The cantons may enact other provisions governing sale at public auction within the bounds of federal law.

## Section Five: The Contract of Exchange

### Art. 237

A. Reference to provisions governing purchase

The rules governing contracts of sale also apply to contracts of exchange in the sense that each party to the exchange is treated as seller in respect of the object promised by him and as buyer in respect of the object promised to him.

### Art. 238

B. Warranty

A party to the exchange who is dispossessed of the object received or has returned it as defective may either claim for damages or for the return of the object that he delivered.

## Title Seven: Gifts

### Art. 239

A. Definition

<sup>1</sup> A gift is any inter vivos disposition in which a person uses his assets to enrich another without receiving an equivalent consideration.

<sup>2</sup> Waiving a right before having acquired it or renouncing an inheritance does not constitute a gift.

<sup>3</sup> The performance of a moral duty is not considered to be a gift.

### Art. 240

B. Personal capacity  
I. Of the donor

<sup>1</sup> A person with capacity to act may make gifts of his assets within the bounds imposed by matrimonial property law and inheritance law.

<sup>2</sup> The assets of a person who lacks capacity to act may be used only to make customary occasional gifts. The liability of the legal representative is reserved.<sup>77</sup>

<sup>3</sup> ...<sup>78</sup>

### Art. 241

II. Of the recipient

<sup>1</sup> A person who lacks capacity to act may accept and legally acquire title to a gift provided he has capacity to consent.

<sup>2</sup> However, the gift is not acquired or is annulled where his legal representative forbids him to accept it or instructs him to return it.

<sup>77</sup> Amended by Annex No 10 of the FA of 19 Dec 2008 (Adult Protection, Law of Persons and Law of Children), in force since 1 Jan 2013 (AS 2011 725; BBl 2006 7001).

<sup>78</sup> Repealed by Annex No 10 of the FA of 19 Dec 2008 (Adult Protection, Law of Persons and Law of Children), with effect from 1 Jan 2013 (AS 2011 725; BBl 2006 7001).

**Art. 242**

C. Establishing  
the gift  
I. From hand to  
hand

<sup>1</sup> A gift from hand to hand is made when the donor presents the object to the recipient.

<sup>2</sup> Gifts of title or rights in rem to immovable property are not effective until an entry is made in the land register.

<sup>3</sup> The entry presupposes a valid promise to give.

**Art. 243**

II. Promise of a  
gift

<sup>1</sup> The promise of a gift is valid only if done in writing.

<sup>2</sup> A promise to give title or rights in rem to immovable property is valid only if done as a public deed.

<sup>3</sup> On fulfilment of the promise to give, the relationship is treated as a gift from hand to hand.

**Art. 244**

III. Effect of  
acceptance

A person who bestows an object on another person by way of a gift may reverse the bestowal at any time before the recipient has accepted it, even where he has effectively separated it from his assets.

**Art. 245**

D. Conditions  
and provisos  
I. In general

<sup>1</sup> Conditions or provisos may be attached to a gift.

<sup>2</sup> A gift whose occurrence is made contingent on the donor's death is subject to the provisions governing testamentary dispositions.

**Art. 246**

II. Fulfilment of  
provisos

<sup>1</sup> The donor may bring action for fulfilment of a proviso that has been accepted by the recipient.

<sup>2</sup> Where fulfilment of the proviso is in the public interest, the competent authority may compel fulfilment after the death of the donor.

<sup>3</sup> The recipient may refuse to fulfil the proviso if the value of the gift does not cover the expenses occasioned by the proviso and he is not reimbursed for the shortfall.

**Art. 247**

III. Reversion  
clause

<sup>1</sup> The donor may provide that the object given shall revert to him in the event that the recipient dies before he does.

<sup>2</sup> A reversionary right attached to a gift of title or rights in rem to immovable property may be entered under priority notice in the land register.

**Art. 248**

E. Liability of the donor

<sup>1</sup> The donor is liable for loss or damage caused by the gift to the recipient only in the event of wilful injury or gross negligence.

<sup>2</sup> He need give only such warranty as he has promised in respect of the object given or the claim assigned.

**Art. 249**

F. Annulment of gifts  
I. Claim for return of gift

Where a gift has been made from hand to hand or a promise to give has been fulfilled, the donor may revoke the gift and claim return of the object given, provided the recipient is still enriched thereby:

- 1.<sup>79</sup> if the recipient has committed a serious criminal offence against the donor or a person close to him;
2. if the recipient has grossly neglected his duties under family law towards the donor or any of the latter's dependants;
3. if the recipient has failed without good cause to fulfil the provisos attached to the gift.

**Art. 250**

II. Revocation and invalidation of a promise to give

<sup>1</sup> The donor who has made a promise to give may revoke the promise and refuse to fulfil it:

1. on the same grounds as justify a claim for return of the object given in the case of a gift from hand to hand;
2. where since the promise was made the donor's financial situation has altered to such an extent that making the gift would cause serious hardship;
3. where since the promise was made the donor has acquired duties under family law that previously did not exist or were significantly less onerous.

<sup>2</sup> All promises to give are annulled when a certificate of loss is issued against the donor or he is declared bankrupt.

**Art. 251**

III. Time limits and heirs' right of action

<sup>1</sup> Revocation may take place at any time in the year commencing on the day on which the grounds for revocation came to the donor's attention.

<sup>2</sup> If the donor dies before the end of this one-year period, his right of action passes to his heirs for the remainder of the period.

<sup>79</sup> Amended by Annex No 2 to the FA of 26 June 1998, in force since 1 Jan 2000 (AS 1999 1118; BBl 1996 I 1).

<sup>3</sup> The donor's heirs may revoke the gift if the recipient wilfully and unlawfully caused the donor's death or prevented him from exercising his right of revocation.

### Art. 252

IV. Death of the donor

Unless otherwise provided, where the donor has undertaken to make periodic payments or performance, his obligation is extinguished on his death.

## Title Eight:<sup>80</sup> The Lease

### Section One: General Provisions

#### Art. 253

A. Definition and scope of application

I. Definition

Leases are contracts in which a landlord or lessor grants a tenant or lessee the use of an object in exchange for rent.

#### Art. 253a

II. Scope of application

1. Residential and commercial premises

<sup>1</sup> The provisions governing the leasing of residential and commercial premises are also applicable to objects on such premises of which the tenant has use.

<sup>2</sup> They are not applicable to holiday homes hired for three months or less.

<sup>3</sup> The Federal Council issues the provisions for implementation.

#### Art. 253b

2. Provisions on protection against unfair rents

<sup>1</sup> The provisions governing protection against unfair rents (Art. 269 et seq.) apply *mutatis mutandis* to non-agricultural leases and to other contracts whose essential purpose is to regulate the transfer of the use of residential or commercial premises against valuable consideration.

<sup>2</sup> They do not apply to the lease of luxury apartments and single-occupancy residential units with six or more bedrooms and reception rooms (not including the kitchen).

<sup>3</sup> The provisions governing challenges to unfair rents do not apply to residential premises made available with public sector support for which rent levels are set by a public authority.

<sup>80</sup> Amended by No I of the FA of 15 Dec 1989, in force since 1 July 1990 (AS 1990 802; BBl 1985 I 1369). See also the financial provisions of Titles VIII and VIII<sup>bis</sup> Art. 5, at the end of this Code.

B. Tie-in transactions

**Art. 254**

A tie-in transaction linked to a lease of residential or commercial premises is void where the conclusion or continuation of the lease is made conditional on such transaction and, under its terms, the tenant assumes an obligation towards the landlord or a third party which is not directly connected with the use of the leased premises.

C. Duration

**Art. 255**

- <sup>1</sup> Leases may be concluded for a limited or indefinite duration.
- <sup>2</sup> Where the intention is that they should end without notice on expiry of the agreed duration, they have a limited duration.
- <sup>3</sup> Other leases are deemed to be of indefinite duration.

D. Obligations of the landlord  
I. In general

**Art. 256**

- <sup>1</sup> The landlord or lessor is required to make the object available on the agreed date in a condition fit for its designated use and to maintain it in that condition.
- <sup>2</sup> Clauses to the contrary to the detriment of the tenant or lessee are void if they are set out:
  - a. in previously formulated general terms and conditions;
  - b. in leases for residential or commercial premises.

II. Duty of disclosure

**Art. 256a**

- <sup>1</sup> If a report was drawn up on the return of the object at the end of the previous lease, the landlord or lessor must on request make this document available for perusal by the new tenant or lessee when the object is handed over to him.
- <sup>2</sup> Similarly, the new tenant or lessee has the right to be informed of the amount of rent paid under the previous lease.

III. Charges and taxes

**Art. 256b**

The landlord or lessor bears all taxes and charges in connection with the leased object.

E. Obligations of the tenant or lessee

**Art. 257**

The rent is the consideration owed by the tenant or lessee to the landlord or lessor for the transfer of the use of the object.

I. Payment of rent and accessory charges  
1. Rent

**Art. 257a**

2. Accessory charges  
a. In general

<sup>1</sup> Accessory charges are the consideration due for services provided by the landlord or lessor or a third party in connection with the use of the property.

<sup>2</sup> They are payable by the tenant or lessee only where this has been specifically agreed with the landlord or lessor.

**Art. 257b**

b. Residential and commercial premises

<sup>1</sup> Accessory charges for residential and commercial premises are the actual outlays made by the landlord for services connected with the use of the property, such as heating, hot water and other operating costs, as well as public taxes arising from the use of the property.

<sup>2</sup> The landlord must allow the tenant on his request to inspect the documentation for such outlays.

**Art. 257c**

3. Payment deadlines

The tenant or lessee must pay the rent and, where applicable, the accessory charges at the end of each month and at the latest on expiry of the lease, unless otherwise agreed or required by local custom.

**Art. 257d**

4. Tenant in arrears

<sup>1</sup> Where, having accepted the property, the tenant or lessee is in arrears with payments of rent or accessory charges, the landlord or lessor may set a time limit for payment and notify him that in the event of non-payment the landlord or lessor will terminate the lease on expiry of that time limit. The minimum time limit is ten days, and 30 days for leases of residential or commercial premises.

<sup>2</sup> In the event of non-payment within the time limit the landlord or lessor may terminate the contract with immediate effect or, for leases of residential and commercial premises, subject to at least 30 days' notice ending on the last day of a calendar month.

**Art. 257e**

II. Security furnished by the tenant

<sup>1</sup> Where the tenant of residential or commercial premises furnishes security in the form of cash or negotiable securities, the landlord must deposit it in a bank savings or deposit account in the tenant's name.

<sup>2</sup> In residential leases, the landlord is not entitled to ask for more than three months' rent by way of security.

<sup>3</sup> The bank may release such security only with the consent of both parties or in compliance with a final payment order or final decision of the court. On expiry of one year following the end of the lease, the tenant or lessee may request that the security be returned to him by the

bank if no claim has been brought against him by the landlord or lessor.

<sup>4</sup> The cantons may enact further provisions.

**Art. 257f**

III. Care and consideration

<sup>1</sup> The tenant or lessee must use the object with all due care.

<sup>2</sup> Where the lease relates to immovable property, the tenant must show due consideration for others who share the building and for neighbours.

<sup>3</sup> If, despite written warning from the landlord or lessor, the tenant or lessee continues to act in breach of his duty of care and consideration such that continuation of the lease becomes unconscionable for the landlord or lessor or other persons sharing the building, the landlord or lessor may terminate the contract with immediate effect or, for leases of residential and commercial premises, subject to at least 30 days' notice ending on the last day of a calendar month.

<sup>4</sup> However, leases of residential and commercial premises may be terminated with immediate effect if the tenant intentionally causes serious damage to the property.

**Art. 257g**

IV. Duty of notification

<sup>1</sup> On learning of defects which he himself is not obliged to remedy, the tenant or lessee must inform the landlord or lessor.

<sup>2</sup> Failure to notify renders the tenant or lessee liable for any loss or damage incurred by the landlord or lessor as a result.

**Art. 257h**

V. Duty of tolerance

<sup>1</sup> The tenant or lessee must tolerate works intended to remedy defects in the object or to repair or prevent damage.

<sup>2</sup> The tenant or lessee must permit the landlord or lessor to inspect the object to the extent required for maintenance, sale or future leasing.

<sup>3</sup> The landlord or lessor must inform the tenant or lessee of works and inspections in good time and take all due account of the latter's interests when they are carried out; all claims of the tenant or lessee for reduction of the rent (Art. 259d) and for damages (Art. 259e) are reserved.

**Art. 258**

F. Non-performance or defective performance when object handed over

<sup>1</sup> Where the landlord or lessor fails to hand over the property on the agreed date or hands it over with defects rendering it wholly or partly unfit for its designated use, the tenant or lessee may sue for non-



performance of contractual obligations pursuant to Articles 107–109 above.

<sup>2</sup> Where the tenant or lessee accepts the object despite such defects but insists that the contract be duly performed, he may make only such claims as would have accrued to him had the defects arisen during the lease (Art. 259a–259i).

<sup>3</sup> The tenant or lessee may bring the claims pursuant to Articles 259a–259i below even if, when handed over to him, the object has defects:

- a. which render the object less fit for its designated use, albeit not substantially so;
- b. which the tenant or lessee would have to remedy at his own expense during the lease (Art. 259).

### Art. 259

G. Defects during the contract  
I. Obligation of tenant to carry out minor cleaning and repairs

The tenant or lessee must remedy defects which can be dealt with by minor cleaning or repairs as part of regular maintenance and, depending on local custom, must do so at his own expense.

### Art. 259a

II. Rights of the tenant  
1. In general

<sup>1</sup> Where defects arise in the object which are not attributable to the tenant or lessee and which he is not obliged to remedy at his own expense, or where he is prevented from using the object as contractually agreed, he may require that the landlord or lessor:

- a. repair the object;
- b. reduce the rent proportionately;
- c. pay damages;
- d. assume responsibility for litigation against a third party.

<sup>2</sup> In addition, a tenant of immovable property may pay rent on deposit rather than to the landlord.

### Art. 259b

2. Remedy of defects  
a. General principle

Where the landlord is aware of a defect and fails to remedy it within a reasonable time, the tenant may:

- a. terminate the contract with immediate effect if the defect renders the leased property unfit or significantly less fit for its designated use or renders a chattel less fit for purpose;

- b. arrange for the defect to be remedied at the landlord's or lessor's expense if it renders the object less fit for its designated use, albeit not substantially so.

**Art. 259c**

- b. Exception The tenant or lessee is not entitled to rectification of the defect where the landlord or lessor provides full compensation for the defective object within a reasonable time.

**Art. 259d**

3. Reduction of rent Where the object is rendered unfit or less fit for its designated use, the tenant or lessee may require the landlord or lessor to reduce the rent proportionately from the time when the landlord or lessor became aware of the defect until the defect is remedied.

**Art. 259e**

4. Damages Where the defect has caused damage to the tenant or lessee, the landlord or lessor is liable in damages unless he can prove that he was not at fault.

**Art. 259f**

5. Assumption of litigation Where a third party claims a right over the object that is incompatible with the rights of the tenant or lessee, on notification by the latter the landlord or lessor is obliged to assume responsibility for the litigation.

**Art. 259g**

6. Deposit of rent  
a. General principle
- <sup>1</sup> A tenant of immovable property requesting that a defect be remedied must, in writing, set the landlord a reasonable time limit within which to comply with such request and may warn him that, in the event of failure to comply, on expiry of the time limit the tenant will deposit his future rent payments with an office designated by the canton. He must notify the landlord in writing of his intention to pay rent on deposit.
- <sup>2</sup> Rent paid on deposit is deemed duly paid.

**Art. 259h**

- b. Release of deposited rent
- <sup>1</sup> The landlord becomes entitled to the rent paid on deposit if the tenant or lessee does not bring claims against him before the conciliation authority within 30 days of the due date for the first rent payment paid into deposit.
- <sup>2</sup> On being notified by the tenant that he intends to pay rent on deposit as it falls due, the landlord may apply to the conciliation authority for release of rent unjustly paid on deposit.

**Art. 259<sup>j81</sup>**

c. Procedure The procedure is governed by the CPO<sup>82</sup>.

**Art. 260**

H. Renovations  
and modifica-  
tions  
I. By the  
landlord

<sup>1</sup> The landlord or lessor may renovate or modify the object only where conscionable for the tenant or lessee and the lease has not been terminated.

<sup>2</sup> In carrying out such works, the landlord or lessor must give due consideration to the tenant or lessee's interests; all claims of the tenant or lessee for reduction of the rent (Art. 259*d*) and for damages (Art. 259*e*) are reserved.

**Art. 260*a***

II. By the tenant <sup>1</sup> The tenant or lessee may renovate or modify the object only with the written consent of the landlord or lessor.

<sup>2</sup> Once such consent has been given, the landlord or lessor may require the restoration of the object to its previous condition only if this has been agreed in writing.

<sup>3</sup> Where at the end of the lease the object has appreciated significantly in value as a result of renovations or modifications to which the landlord or lessor consented, the tenant or lessee may claim appropriate compensation for such appreciation, subject to any written agreements providing for higher levels of compensation.

**Art. 261**

J. Change of  
ownership  
I. Alienation of  
the object

<sup>1</sup> Where after concluding the contract the landlord alienates the object or is dispossessed of it in debt collection or bankruptcy proceedings, the lease passes to the acquirer together with ownership of the object.

<sup>2</sup> However, the new owner may:

- a. serve notice to terminate a lease on residential or commercial premises as of the next legally admissible termination date if he claims an urgent need of such premises for himself, his close relatives or in-laws;
- b. serve notice to terminate a rental agreement in respect of other objects as of the next legally admissible termination date unless the contract allows for earlier termination.

<sup>81</sup> Amended by Annex 1 No II 5 of the Civil Procedure Code of 19 Dec 2008, in force since 1 Jan 2011 (AS 2010 1739; BBl 2006 7221).

<sup>82</sup> SR 272

<sup>3</sup> If the new owner terminates sooner than is permitted under the contract with the existing landlord or lessor, the latter is liable for all resultant losses.

<sup>4</sup> The provisions governing compulsory purchase are unaffected.

### **Art. 261a**

II. Conferral of limited rights in rem

Where the landlord or lessor grants a third party a limited right in rem and this is tantamount to a change of ownership, the provisions governing alienation of the object are applicable *mutatis mutandis*.

### **Art. 261b**

III. Entry under priority notice in the land register

<sup>1</sup> The parties to a lease may agree to have it entered under priority notice in the land register.

<sup>2</sup> The effect of such entry is that every future owner must allow the property to be used in accordance with the lease.

### **Art. 262**

K. Sub-letting

<sup>1</sup> A tenant may sub-let all or part of the property with the landlord's consent.

<sup>2</sup> The landlord may refuse his consent only if:

- a. the tenant refuses to inform him of the terms of the sub-lease;
- b. the terms and conditions of the sub-lease are unfair in comparison with those of the principal lease;
- c. the sub-letting gives rise to major disadvantages for the landlord.

<sup>3</sup> The tenant is liable to the landlord for ensuring that the sub-tenant uses the property only in the manner permitted to the tenant himself. To this end the landlord may issue reminders directly to the sub-tenant.

### **Art. 263**

L. Transfer of lease to a third party

<sup>1</sup> The tenant of commercial premises may transfer his lease to a third party with the landlord's written consent.

<sup>2</sup> The landlord may withhold consent only for good cause.

<sup>3</sup> Once the landlord gives his consent, the third party is subrogated to the rights and obligations of the tenant under the lease.

<sup>4</sup> The tenant is released from his obligations towards the landlord. However, he remains jointly and severally liable with the third party until such time as the lease ends or may be terminated under the contract or by law, but in any event for no more than two years.

**Art. 264**

M. Early return  
of the object

1 Where the tenant or lessee returns the object without observing the notice period or the deadline for termination, he is released from his obligations towards the landlord or lessor only if he proposes a new tenant or lessee who is acceptable to the landlord or lessor, solvent and willing to take on the lease or rental agreement under the same terms and conditions.

2 Otherwise, the tenant or lessee must continue to pay the rent until such time as the lease ends or may be terminated under the contract or by law.

3 Against the rent owing to him, the landlord or lessor must permit account to be taken of:

- a. any expenses he has saved, and
- b. any earnings which he has obtained, or intentionally failed to obtain, from putting the object to some other use.

**Art. 265**

N. Set-off

The landlord or lessor and the tenant or lessee may not waive in advance their right to set off claims arising from the lease.

**Art. 266**

O. End of lease  
I. Expiry of  
agreed duration

1 Where the parties have expressly or tacitly agreed to a limited duration, the lease comes to an end on expiry thereof without any need for notice to be given.

2 If the lease is tacitly continued, its duration becomes indefinite.

**Art. 266a**

II. Notice of  
termination and  
termination dates  
1. In general

1 The parties may give notice to terminate a lease of indefinite duration by observing the legally prescribed notice periods and termination dates, except where they have agreed a longer notice period or a different termination date.

2 Where the prescribed notice period or termination date is not observed, termination will be effective as of the next termination date.

**Art. 266b**

2. Immovable  
and movable  
structures

A party may terminate a lease of immovable property or a movable structure by giving three months' notice expiring on a date fixed by local custom or, in the absence of such custom, at the end of a six-month period of the lease.

3. Residential premises

**Art. 266c**

A party may terminate a lease of residential premises by giving three months' notice expiring on a date fixed by local custom or, in the absence of such custom, at the end of a three-month period of the lease.

4. Commercial premises

**Art. 266d**

A party may terminate the lease of a commercial property by giving six months' notice expiring on a date fixed by local custom or, in the absence of such custom, at the end of a three-month period of the lease.

5. Furnished rooms and parking spaces

**Art. 266e**

A party may terminate the lease of furnished rooms, a separately rented parking space or other comparable facility by giving two weeks' notice expiring at the end of a one-month period of the lease.

6. Chattels

**Art. 266f**

A party may terminate a lease of chattels by giving three days' notice expiring at any time.

III. Extraordinary notice  
1. Good cause

**Art. 266g**

<sup>1</sup> Where performance of the contract becomes unconscionable for the parties for good cause, they may terminate the lease by giving the legally prescribed notice expiring at any time.

<sup>2</sup> The court determines the financial consequences of early termination, taking due account of all the circumstances.

2. Bankruptcy of the tenant or lessee

**Art. 266h**

<sup>1</sup> Where the tenant or lessee becomes bankrupt after taking possession of the property, the landlord or lessor may call for security for future rent payments. He must grant the tenant or lessee and the bankruptcy administrators an appropriate time limit in which to furnish it.

<sup>2</sup> Where no such security is furnished to the landlord or lessor, he may terminate the contract with immediate effect.

3. Death of the tenant or lessee

**Art. 266i**

In the event of the death of the tenant or lessee, his heirs may terminate the contract by giving the legally prescribed notice expiring on the next admissible termination date.

**Art. 266k**

4. Chattels A lessee of a chattel hired for his own private use and leased to him on a commercial basis by the lessor may terminate the lease by giving at least 30 days' notice expiring at the end of a three-month period of the lease. The lessor has no claim for compensation.

**Art. 266l**

- IV. Required form of notice for residential and commercial premises
1. In general
- 1 Notice to terminate leases of residential and commercial premises must be given in writing.
- 2 The landlord must give notice of termination using a form approved by the canton which informs the tenant how he must proceed if he wishes to contest the termination or apply for an extension of the lease.

**Art. 266m**

2. Family residence
- a. Notice given by the tenant
- 1 Where the leased property serves as the family residence, one spouse may not terminate the lease without the express consent of the other.
- 2 If the spouse cannot obtain such consent or it is withheld without good cause, he or she may apply to the court.
- 3 The same provisions apply mutatis mutandis to registered partners.<sup>83</sup>

**Art. 266n<sup>84</sup>**

- b. Notice given by the landlord
- Notice of termination given by the landlord and any notification of a time limit for payment accompanied by a warning of termination in the event of non-payment (Art. 257d) must be served separately on the tenant and on his spouse or registered partner.

**Art. 266o**

3. Void notice
- Notice of termination is void if it does not conform to Articles 266l–266n.

**Art. 267**

- P. Return of the object
- I. In general
- 1 At the end of the lease, the tenant or lessee must return the object in a condition that accords with its contractually designated use.
- 2 Any clause whereby the tenant or lessee undertakes to pay compensation on termination of the lease is void except insofar as such compensation relates to possible damage.

<sup>83</sup> Inserted by Annex No 11 to the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan 2007 (AS 2005 5685; BBl 2003 1288).

<sup>84</sup> Amended by Annex No 11 to the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan 2007 (AS 2005 5685; BBl 2003 1288).

**Art. 267a**

II. Inspection of object and notification of tenant or lessee

<sup>1</sup> When the object is returned, the landlord or lessor must inspect its condition and immediately inform the tenant or lessee of any defects for which he is answerable.

<sup>2</sup> If the landlord or lessor fails to do so, he forfeits his claims save in respect of defects not detectable on customary inspection.

<sup>3</sup> Where the landlord or lessor discovers such defects subsequently, he must inform the tenant or lessee immediately.

**Art. 268**

Q. Landlord's special lien  
I. Scope

<sup>1</sup> As security for rent for the past year and the current six-month period, a landlord of commercial premises has a special lien on chattels located on the leased premises and either used as fixtures or required for the use of the premises.

<sup>2</sup> The landlord's special lien also extends to property brought onto the premises by a sub-tenant to the extent that he has not paid his rent.

<sup>3</sup> Goods not subject to attachment by creditors of the tenant are not subject to the lien.

**Art. 268a**

II. Objects belonging to third parties

<sup>1</sup> The rights of third parties to objects which the landlord knew or should have known do not belong to the tenant and to stolen, lost, missing or otherwise mislaid objects take precedence over the landlord's special lien.

<sup>2</sup> Where the landlord learns only during the lease that objects brought onto the premises by the tenant are not the latter's property, his lien on them is extinguished unless he terminates the lease as of the next admissible termination date.

**Art. 268b**

III. Exercise of lien

<sup>1</sup> Where the tenant wishes to vacate the premises or intends to remove the objects located thereon, the landlord may, with the assistance of the competent authority, retain such objects as are required to secure his claim.

<sup>2</sup> Items removed secretly or by force may, with police assistance, be brought back onto the premises within ten days of their removal.



## Section Two: Protection against Unfair Rents or other Unfair Claims by the Landlord in respect of Leases of Residential and Commercial Premises

### Art. 269

- A. Unfair rent  
I. General rule
- Rents are unfair where they permit the landlord to derive excessive income from the leased property or where they are based on a clearly excessive sale price.

### Art. 269a

- II. Exceptions
- In particular, rents are not generally held to be unfair if:
- a. they fall within the range of rents customary in the locality or district;
  - b. they are justified by increases in costs or by additional services provided by the landlord;
  - c. in the case of a recently constructed property, they do not exceed the range of gross pre-tax yield required to cover costs;
  - d. they serve merely to balance out a rent decrease previously granted as part of a reallocation of funding costs at prevailing market rates and they are set out in a payment plan made known to the tenant in advance;
  - e. they serve merely to balance out the inflation on the risk capital;
  - f. they do not exceed the levels recommended in master agreements drawn up by landlords' and tenants' associations or organisations representing similar interests.

### Art. 269b

- B. Index-linked rent
- An agreement to link rent to an index is valid only where the lease is contracted for at least five years and the benchmark is the Swiss consumer prices index.

### Art. 269c

- C. Periodical rent increases
- An agreement to increase the rent periodically by fixed amounts is valid only where:
- a. the lease is contracted for at least three years;
  - b. the rent is increased no more than once a year; and
  - c. the amount by which it is increased is fixed in francs.

D. Rent increases and other unilateral amendments by the landlord

### Art. 269d

<sup>1</sup> The landlord may at any time increase the rent with effect from the next termination date. He must give notice of and reasons for the rent increase at least ten days before the beginning of the notice period for termination using a form approved by the canton.

<sup>2</sup> The rent increase is void where:

- a. it is not communicated using the prescribed form;
- b. no reasons are given;
- c. notification of the increase is accompanied by notice to terminate or a threat of termination.

<sup>3</sup> Paragraphs 1 and 2 also apply where the landlord intends to make other unilateral amendments to the lease to the detriment of the tenant, for example by reducing the services provided or adding new accessory charges.

E. Challenge to rent  
I. Request for rent reduction  
1. Initial rent

### Art. 270

<sup>1</sup> Within 30 days of taking possession of the property, the tenant may challenge the initial rent as unfair within the meaning of Articles 269 and 269a before the conciliation authority and request said authority to order a reduction of the rent:

- a. if the tenant felt compelled to conclude the lease agreement on account of personal or family hardship or by reason of the conditions prevailing on the local market for residential and commercial premises; or
- b. if the initial rent required by the landlord is significantly higher than the previous rent for the same property.

<sup>2</sup> In the event of a housing shortage, the cantons may make it obligatory in all or part of their territory to use the form stipulated in Article 269d when contracting any new lease.

### Art. 270a

2. During the lease

<sup>1</sup> The tenant may challenge the rent as unfair and request its reduction as of the next termination date where he has good cause to suppose that, because of significant changes to the calculation basis and most notably a reduction in costs, the return derived by the landlord from the leased property is now excessive within the meaning of Articles 269 and 269a.

<sup>2</sup> The tenant must present his request for a rent reduction in writing to the landlord, who has 30 days in which to respond. Where the landlord does not accede to the request in full or in part or does not respond in good time, the tenant may apply to the conciliation authority within 30 days.

<sup>3</sup> Paragraph 2 does not apply if the tenant is simultaneously challenging a rent increase and requesting a rent reduction.

#### **Art. 270b**

II. Challenging rent increases and other unilateral amendments by the landlord

<sup>1</sup> Within 30 days of receiving notice of a rent increase, the tenant may challenge it before the conciliation authority as unfair within the meaning of Articles 269 and 269a.

<sup>2</sup> Paragraph 1 also applies where the landlord makes other unilateral amendments to the lease to the detriment of the tenant, in particular by reducing the services provided or adding new accessory charges.

#### **Art. 270c**

III. Challenging index-linked rent

Without prejudice to the right to challenge the initial rent, a party may argue before the conciliation authority only that the rent increase or reduction requested by the other party is not justified by a corresponding change in the index.

#### **Art. 270d**

IV. Challenging periodical rent increases

Without prejudice to the right to challenge the initial rent, the tenant may not challenge periodical rent increases.

#### **Art. 270e**

F. Continued validity of lease during challenge proceedings

The existing lease remains in force without change:

- a. during conciliation proceedings, where the parties fail to reach agreement;
- b. during court proceedings, subject to provisional measures ordered by the court.

### **Section Three: Protection against Termination of Leases of Residential and Commercial Premises**

#### **Art. 271**

A. Notice open to challenge  
I. In general

<sup>1</sup> Notice of termination may be challenged where it contravenes the principle of good faith.

<sup>2</sup> On request, reasons for giving notice must be stated.

#### **Art. 271a**

II. Notice served by the landlord

<sup>1</sup> Notice of termination served by the landlord may be challenged in particular where it is given:

- a. because the tenant is asserting claims arising under the lease in good faith;
- b. because the landlord wishes to impose a unilateral amendment of the lease to the tenant's detriment or to change the rent;
- c. for the sole purpose of inducing the tenant to purchase the leased premises;
- d. during conciliation or court proceedings in connection with the lease, unless the tenant initiated such proceedings in bad faith;
- e. within three years of the conclusion of conciliation or court proceedings in connection with the lease in which the landlord:
  1. was largely unsuccessful;
  2. withdrew or considerably reduced his claim or action;
  3. declined to bring the matter before the court;
  4. reached a settlement or some other compromise with the tenant;
- f. because of changes in the tenant's family circumstances which do not give rise to any significant disadvantage to the landlord.

<sup>2</sup> Paragraph 1 let. e. is also applicable where the tenant can produce documents showing that he reached a settlement with the landlord concerning a claim in connection with the lease outside conciliation or court proceedings.

<sup>3</sup> Paragraph 1 let. d. and e. are not applicable where notice of termination is given:

- a. because the landlord urgently needs the property for his own use or that of family members or in-laws;
- b. because the tenant is in default on his payments (Art. 257d);
- c. because the tenant is in serious breach of his duty of care and consideration (Art. 257f para. 3 and 4);
- d. as a result of alienation of the leased premises (Art. 261);
- e. for good cause (Art. 266g);
- f. because the tenant is bankrupt (Art. 266h).

## Art. 272

B. Extension of the lease  
I. Tenant's entitlement

<sup>1</sup> The tenant may request the extension of a fixed-term or open-ended lease where termination of the lease would cause a degree of hardship for him or his family that cannot be justified by the interests of the landlord.

<sup>2</sup> When weighing the respective interests, the competent authority has particular regard to:

- a. the circumstances in which the lease was contracted and the terms of the lease;
- b. the duration of the lease;
- c. the personal, family and financial circumstances of the parties, as well as their conduct;
- d. any need that the landlord might have to use the premises for himself, his family members or his in-laws and the urgency of such need;
- e. the conditions prevailing on the local market for residential and commercial premises.

<sup>3</sup> Where the tenant requests a second extension, the competent authority must also consider whether the tenant has done everything that might reasonably be expected of him to mitigate the hardship caused by the notice of termination.

#### **Art. 272a**

II. Exclusion of extension

<sup>1</sup> No extension is granted where notice of termination is given:

- a. because the tenant is in default on his payments (Art. 257d);
- b. because the tenant is in serious breach of his duty of care and consideration (Art. 257f para. 3 and 4);
- c. because the tenant is bankrupt (Art. 266h);
- d. in respect of a lease expressly concluded for a limited period until refurbishment or demolition works begin or the requisite planning permission is obtained.

<sup>2</sup> As a general rule, no extension is granted where the landlord offers the tenant equivalent residential or commercial premises.

#### **Art. 272b**

III. Length of extension

<sup>1</sup> A lease may be extended by up to four years in the case of residential premises and by up to six years for commercial premises. Within these overall limits, one or two extensions may be granted.

<sup>2</sup> Where the parties agree to an extension of the lease, they are not bound by a maximum duration and the tenant may waive a second extension.

#### **Art. 272c**

IV. Continued validity of lease

<sup>1</sup> Either party may ask the court to modify the lease in line with changed circumstances when deciding on the lease extension.

<sup>2</sup> Where the lease is not varied in the decision on the lease extension, it remains in force during the extension period, subject to other means of variation envisaged by law.

**Art. 272d**

V. Notice given during extension

Unless the decision on extension or the extension agreement stipulates otherwise, the tenant may terminate the lease:

- a. by giving one month's notice expiring at the end of a calendar month in cases where the extension does not exceed one year;
- b. by giving three months' notice expiring on an admissible termination date in cases where the extension exceeds one year.

**Art. 273**

C. Time limits and procedure<sup>85</sup>

<sup>1</sup> A party wishing to challenge termination must bring the matter before the conciliation authority within 30 days of receiving the notice of termination.

<sup>2</sup> A tenant wishing to apply for a lease extension must submit his request to the conciliation authority:

- a. within 30 days of receiving the notice of termination, where the lease is open-ended;
- b. not later than 60 days before expiry of the lease, where it is of limited duration.

<sup>3</sup> A tenant requesting a second extension must submit his request to the conciliation authority not later than 60 days before expiry of the first extension.

<sup>4</sup> The procedure before the conciliation authority is governed by the CPO<sup>86, 87</sup>

<sup>5</sup> Where the competent authority rejects a request made by the tenant relating to challenging termination, it must examine ex officio whether the lease may be extended.<sup>88</sup>

**Art. 273a**

D. Family residence

<sup>1</sup> Where the leased property serves as the family residence, the tenant's spouse is likewise entitled to challenge the termination, request a lease

<sup>85</sup> Amended by Annex 1 No II 5 of the Civil Procedure Code of 19 Dec 2008, in force since 1 Jan 2011 (AS 2010 1739; BB1 2006 7221).

<sup>86</sup> SR 272

<sup>87</sup> Amended by Annex 1 No II 5 of the Civil Procedure Code of 19 Dec 2008, in force since 1 Jan 2011 (AS 2010 1739; BB1 2006 7221).

<sup>88</sup> Amended by Annex 1 No II 5 of the Civil Procedure Code of 19 Dec 2008, in force since 1 Jan 2011 (AS 2010 1739; BB1 2006 7221).

extension and exercise the other rights accruing to the tenant in the event that notice of termination is served.

<sup>2</sup> Agreements providing for an extension of the lease are valid only if concluded with both spouses.

<sup>3</sup> The same provisions apply *mutatis mutandis* to registered partners.<sup>89</sup>

### **Art. 273b**

E. Sub-letting

<sup>1</sup> The provisions of this Chapter apply to sub-leases provided the principal lease has not been terminated. A sub-lease may be extended only within the duration of the principal lease.

<sup>2</sup> Where the main purpose of the sub-lease is to circumvent the provisions governing protection against termination, the sub-tenant is granted such protection without regard to the principal lease. If the principal lease is terminated, the landlord is subrogated to the rights of the tenant in his contract with the sub-tenant.

### **Art. 273c**

F. Mandatory provisions

<sup>1</sup> The tenant may waive the rights conferred on him by the provisions of this Chapter only where this is expressly envisaged.

<sup>2</sup> All agreements to the contrary are void.

## **Section Four:**<sup>90</sup> ...

### **Art. 274–274g**

## **Title Eight**<sup>bis</sup><sup>91</sup> **The Usufructuary Lease**

### **Art. 275**

A. Definition and scope of application  
I. Definition

The usufructuary lease is a contract whereby the lessor undertakes to grant the lessee the use of a productive object or right and the benefit of its fruits or proceeds in exchange for rent.

<sup>89</sup> Inserted by Annex No 11 to the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan 2007 (AS **2005** 5685; BBl **2003** 1288).

<sup>90</sup> Repealed by Annex 1 No II 5 of the Civil Procedure Code of 19 Dec 2008, with effect from 1 Jan 2011 (AS **2010** 1739; BBl **2006** 7221).

<sup>91</sup> Inserted by No I of the FA of 15 Dec 1989, in force since 1 July 1990 (AS **1990** 802; BBl **1985** 1 1369). See also the Final Provisions of Titles VIII and VIII<sup>bis</sup> Art. 5 at the end of this Code.

II. Scope of application  
 1. Residential and commercial premises

**Art. 276**

The provisions governing usufructuary leases of residential and commercial premises also apply to objects made available together with such premises for the use and enjoyment of the tenant.

2. Agricultural lease

**Art. 276a**

<sup>1</sup> Usufructuary leases relating to agricultural enterprises or to agricultural land and buildings are governed by the Federal Act of 4 October 1985<sup>92</sup> on Agricultural Leases, insofar as it contains special provisions.

<sup>2</sup> In other respects the Code of Obligations applies with the exception of the provisions governing leases of residential and commercial premises.<sup>93</sup>

B. Inventory

**Art. 277**

Where machinery, livestock or supplies are included in the lease, each party must furnish the other with a precise, signed inventory and take part in a joint valuation thereof.

C. Obligations of the lessor  
 I. Hand-over of object

**Art. 278**

<sup>1</sup> The lessor is required to make the object available on the agreed date in a condition fit for its designated use and operation.

<sup>2</sup> If a report was drawn up on the return of the object at the end of the previous lease, on request the lessor must make this document available for inspection by the new lessee when the object is handed over to him.

<sup>3</sup> Similarly, the new lessee has the right to be informed of the amount of rent paid under the previous lease.

II. Major repairs

**Art. 279**

The lessor is obliged to carry out major repairs to the object that become necessary during the lease at his own expense and as soon as the lessee has informed him of the need for such repairs.

III. Charges and taxes

**Art. 280**

The lessor bears all taxes and charges in connection with the object.

<sup>92</sup> SR 221.213.2

<sup>93</sup> Amended by Annex 1 No II 5 of the Civil Procedure Code of 19 Dec 2008, in force since 1 Jan 2011 (AS 2010 1739; BBl 2006 7221).



**Art. 281**

- D. Obligations of the lessee
- I. Payment of rent and accessory charges
1. In general
- 1 The lessee must pay the rent and, where applicable, the accessory charges at the end of each year of the lease but not later than when the lease expires, save where another payment date is stipulated by agreement or local custom.
- 2 Article 257a applies to accessory charges.

**Art. 282**

2. Lessee in arrears
- 1 Where, having accepted the property, the lessee is in arrears with payments of rent or accessory charges, the lessor may set a time limit of at least 60 days for payment and notify him that in the event of non-payment the lessor will terminate the lease on expiry of that time limit.
- 2 In the event of non-payment within the time limit the lessor may terminate the usufructuary lease with immediate effect or, for leases of residential and commercial premises, subject to at least 30 days' notice ending on the last day of a calendar month.

**Art. 283**

- II. Care, consideration and maintenance
1. Care and consideration
- 1 The lessee must use the leased object with due care in accordance with its intended use and in particular must ensure that its long-term productivity is sustained.
- 2 Where the usufructuary lease relates to immovable property, the tenant must show due consideration for others who share the building and for neighbours.

**Art. 284**

2. Normal maintenance
- 1 The lessee must carry out the normal maintenance of the leased object.
- 2 In accordance with local custom, he must carry out minor repairs and replace inexpensive equipment and tools which have become useless as a result of age or wear and tear.

**Art. 285**

3. Breach of duty by the lessee
- 1 If, despite written warning from the lessor, the lessee continues to act in breach of his duty of care, consideration or maintenance such that continuation of the usufructuary lease becomes unconscionable for the lessor or other persons sharing the building, the lessor may terminate the lease with immediate effect or, for leases of residential and commercial premises, subject to at least 30 days' notice ending on the last day of a calendar month.

<sup>2</sup> However, leases of residential and commercial premises may be terminated with immediate effect if the tenant intentionally causes serious damage to the property.

### Art. 286

III. Duty of notification

<sup>1</sup> If major repairs become necessary or a third party makes claims against the object of the usufructuary lease, the lessee must inform the lessor immediately.

<sup>2</sup> Failure to notify renders the lessee liable for any damage incurred by the lessor as a result.

### Art. 287

IV. Duty of tolerance

<sup>1</sup> The lessee must tolerate major repairs intended to remedy defects in the object or to repair or prevent damage.

<sup>2</sup> The lessee must permit the lessor to inspect the object to the extent required for maintenance, sale or future leasing.

<sup>3</sup> The lessor must inform the lessee of works and inspections in good time and take all due account of the latter's interests when they are carried out; the provisions on leases in Title 8 (Art. 259*d* and 259*e*) apply *mutatis mutandis* to all claims of the lessee for reduction of the rent and for damages.

### Art. 288

E. Rights of the lessee on non-performance or defective performance

<sup>1</sup> The provisions on leases in Title 8 (Art. 258 and 259*a*–259*i*) apply *mutatis mutandis*:

- a. where the lessor fails to hand over the property on the agreed date or hands it over in a defective condition;
- b. where defects arise in the object which are not attributable to the lessee and which he is not obliged to remedy at his own expense, or where he is prevented from using the object as contractually agreed.

<sup>2</sup> Clauses to the contrary to the detriment of the lessee are void if they are set out:

- a. in previously formulated general terms and conditions;
- b. in usufructuary leases for residential or commercial premises.

### Art. 289

F. Renovations and modifications

I. By the lessor

<sup>1</sup> The lessor may renovate or modify the object only where conscionable for the lessee and the usufructuary lease has not been terminated.

<sup>2</sup> In carrying out such works, the lessor must give due consideration to the lessee's interests; the provisions on leases in Title 8 (Art. 259*d* and

Art. 259e) apply *mutatis mutandis* to any claims of the lessee for reduction of the rent and for damages.

### Art. 289a

- II. By the lessee
- 1 The lessee requires the lessor's written consent in order to:
    - a. alter the manner in which the object has traditionally been managed in ways which will have lasting significance beyond the duration of the lease;
    - b. carry out renovations or modifications to the object above and beyond the remit of normal maintenance.
  - 2 Once such consent has been given, the lessor may require the restoration of the object to its previous condition only if this has been agreed in writing.
  - 3 Where the lessor has not given his written consent to an alteration within the meaning of paragraph 1 let. a. and the lessee has failed to reverse such alteration within an appropriate time, the lessor may terminate the contract with immediate effect or, for leases of residential and commercial premises, subject to at least 30 days' notice expiring on the last day of a calendar month.

### Art. 290

G. Change of ownership

- The provisions on leases in Title 8 (Art. 261–261b) apply *mutatis mutandis*:
- a. where the leased object is alienated;
  - b. where limited rights in rem are established on the leased object;
  - c. where the lease is entered under priority notice in the land register.

### Art. 291

- H. Sub-letting
- 1 The lessee may sub-let all or part of the leased object with the lessor's consent.
  - 2 The lessor may refuse his consent to the sub-letting of premises which form part of a leased property only if:
    - a. the lessee refuses to inform him of the terms of the sub-lease;
    - b. the terms and conditions of the sub-lease are unfair in comparison with those of the usufructuary lease;
    - c. the sub-letting gives rise to major disadvantages for the lessor.
  - 3 The lessee is liable to the lessor for ensuring that the sub-tenant or sub-lessee uses the object only in the manner permitted to the lessee

himself. To this end the lessor may issue reminders directly to the sub-tenant or sub-lessee.

### Art. 292

J. Transfer of usufructuary lease to a third party

Article 263 applies mutatis mutandis to the transfer of a usufructuary lease of commercial premises to a third party.

### Art. 293

K. Early return of the object

<sup>1</sup> Where the lessee returns the object without observing the notice period or the deadline for termination, he is released from his obligations towards the lessor only if he proposes a new lessee who is acceptable to the lessor, solvent and willing to take on the lease on the same terms and conditions.

<sup>2</sup> Otherwise, the lessee must continue to pay the rent until such time as the lease ends or may be terminated under the contract or by law.

<sup>3</sup> Against the rent owing to him the lessor must permit the following to be brought into account:

- a. any expenses he has saved, and
- b. any earnings which he has obtained, or intentionally failed to obtain, from putting the object to some other use.

### Art. 294

L. Set-off

Article 265 applies mutatis mutandis to the set-off of claims arising from a usufructuary lease.

### Art. 295

M. End of usufructuary lease

<sup>1</sup> Where the parties have expressly or tacitly agreed to a limited duration, the usufructuary lease comes to an end on expiry thereof without any need for notice to be given.

I. Expiry of agreed duration

<sup>2</sup> If the usufructuary lease is tacitly continued, it is deemed to have been extended on the same terms and conditions for a further year unless otherwise agreed.

<sup>3</sup> A party may terminate the extended usufructuary lease by giving the legally prescribed period of notice expiring at the end of a lease year.

### Art. 296

II. Notice of termination and termination dates

<sup>1</sup> The parties may terminate an open-ended usufructuary lease by giving six months' notice expiring on any date of their choosing unless otherwise stipulated by agreement or local custom and unless the nature of the leased object implies that the parties intended otherwise.

<sup>2</sup> The parties may terminate an open-ended usufructuary lease of residential or commercial premises by giving at least six months' notice expiring on a date fixed by local custom or, absent in the absence of such custom, at the end of a three-month lease period. The parties may agree a longer notice period or another termination date.

<sup>3</sup> Where the prescribed notice period or termination date is not observed, termination will be effective as of the next termination date.

### **Art. 297**

III. Extraordinary notice  
1. Good cause

<sup>1</sup> Where performance of the contract becomes unconscionable for the parties for good cause, they may terminate the usufructuary lease by giving the legally prescribed notice expiring at any time.

<sup>2</sup> The court determines the financial consequences of early termination, taking due account of all the circumstances.

### **Art. 297a**

2. Bankruptcy of the lessee

<sup>1</sup> Where the lessee becomes bankrupt after taking possession of the property, the lease ends on commencement of bankruptcy proceedings.

<sup>2</sup> However, where the lessor has received sufficient security for the current year's rent and the inventory, he must continue the lease until the end of the lease year.

### **Art. 297b**

3. Death of the lessee

In the event of the death of the lessee, his heirs and the lessor may terminate the contract by giving the legally prescribed notice expiring on the next admissible termination date.

### **Art. 298**

IV. Required form of notice for residential and commercial premises

<sup>1</sup> Notice to terminate usufructuary leases of residential or commercial premises must be given in writing.

<sup>2</sup> The lessor must give notice of termination using a form approved by the canton which informs the lessee how he must proceed if he wishes to contest the termination or apply for an extension of the lease.

<sup>3</sup> Notice to terminate is void if it does not fulfil the above requirements.

### **Art. 299**

N. Return of the object  
I. In general

<sup>1</sup> At the end of the usufructuary lease, the lessee must return the object together with all items listed in the inventory in the condition they are in at that time.

<sup>2</sup> He is entitled to compensation for improvements which result:

- a. from endeavours exceeding the normal degree of diligence due in managing the object;
- b. for renovations or modifications to which the lessor gave his written consent.

<sup>3</sup> He must compensate the lessor for any deterioration that could have been prevented by diligent management of the object.

<sup>4</sup> Any agreement whereby the lessee undertakes to pay compensation on termination of the lease is void except insofar as such compensation relates to possible damage.

### **Art. 299a**

II. Inspection of object and notification of lessee

<sup>1</sup> When the object is returned, the lessor must inspect its condition and immediately inform the lessee of any defects for which he is answerable.

<sup>2</sup> If the lessor fails to do so, he forfeits his claims save in respect of defects not detectable on customary inspection.

<sup>3</sup> Where the lessor discovers such defects subsequently, he must inform the lessee immediately.

### **Art. 299b**

III. Replacement of inventory items

<sup>1</sup> Where items listed in the inventory were valued when the object was originally handed over to the lessee, he must return an inventory of items of the same type and estimated value or pay compensation for any reduction in value.

<sup>2</sup> The lessee is not obliged to pay compensation for missing items if he can prove that they were lost through the fault of the lessor or force majeure.

<sup>3</sup> The lessee is entitled to compensation for added value resulting from his outlays and his labour.

### **Art. 299c**

O. Lessor's lien

The lessor of commercial premises has the same right of lien in respect of the rent for the past year and the current year of a usufructuary lease as the landlord under the provisions governing leases and rental agreements (Art. 268 et seq.).

### **Art. 300**

P. Protection against termination of usufructuary leases of residential and commercial premises

<sup>1</sup> The provisions on leases in Title 8 (Art. 271–273c) apply *mutatis mutandis* to protection against termination of usufructuary leases of residential or commercial premises.

<sup>2</sup> The provisions governing the family residence (Art. 273a) are not applicable.

**Art. 301<sup>94</sup>**

Q. Procedure      The procedure is governed by the CPO<sup>95</sup>.

**Art. 302**

R. Livestock lease  
I. Rights and obligations of the tenant farmer

<sup>1</sup> In respect of a lease of livestock which is not part of an agricultural tenancy, all benefits arising from leased livestock belong to the tenant farmer unless otherwise provided by agreement or local custom.

<sup>2</sup> The tenant farmer feeds and cares for the livestock and pays rent to the lessor in the form of either money or a share in the benefits in kind.

**Art. 303**

II. Liability

<sup>1</sup> Unless otherwise provided by agreement or local custom, the tenant farmer is liable for damage to the leased livestock unless he can prove that such damage could not have been avoided even with all due care and attention.

<sup>2</sup> The tenant farmer is entitled to have any extraordinary costs of caring for the livestock reimbursed by the lessor unless the tenant farmer was at fault in incurring such costs.

<sup>3</sup> The tenant farmer must inform the lessor as soon as possible of serious accidents or illness.

**Art. 304**

III. Termination

<sup>1</sup> Where the lease is open-ended, either party may terminate it as of any date of their choosing, unless otherwise provided by agreement or local custom.

<sup>2</sup> However, such termination must take place in good faith and not at an inopportune juncture.

<sup>94</sup> Amended by Annex 1 No II 5 of the Civil Procedure Code of 19 Dec 2008, in force since 1 Jan 2011 (AS 2010 1739; BBl 2006 7221).

<sup>95</sup> SR 272

## Title Nine: The Loan

### Section One: The Loan for Use

#### Art. 305

##### A. Definition

A loan for use is a contract whereby the lender undertakes to make an object available free of charge to the borrower for the latter's use and the borrower undertakes to return it to him after having made use of it.

#### Art. 306

##### B. Effect I. Borrower's right of use

<sup>1</sup> The borrower may make use of the loaned object only for the purpose stipulated in the contract or, in the absence of any stipulation, for its normal purpose or the purpose dictated by its nature.

<sup>2</sup> He is not entitled to grant use of the object to a third party.

<sup>3</sup> A borrower acting in breach of these provisions is liable even for accidental damage unless he can prove that the object would have been affected in any event.

#### Art. 307

##### II. Maintenance costs

<sup>1</sup> The borrower bears the ordinary costs of maintenance and, in the case of loaned animals, in particular the costs of feeding them.

<sup>2</sup> He is entitled to reimbursement of extraordinary expenses he has been obliged to incur for the lender's benefit.

#### Art. 308

##### III. Liability of joint borrowers

Persons who have jointly borrowed a single object are jointly and severally liable for it.

#### Art. 309

##### C. Termination I. Loan for designated use

<sup>1</sup> Where the loan for use is open-ended, it ends as soon as the borrower has made use of the object as agreed or on expiry of the period in which such use could have been made of it.

<sup>2</sup> The lender is entitled to reclaim the object before that time if the borrower uses it for a purpose contrary to the agreement, if he damages it, if he permits a third party to use it or if unforeseen developments occur which leave the lender in urgent need of the object.

#### Art. 310

##### II. Loan for non- designated use

Where the contract stipulates neither the purpose nor the duration of the loan, the lender may reclaim the loaned object whenever he sees fit.



**Art. 311**

III. Death of the borrower The loan for use ends on the death of the borrower.

**Section Two: The Fixed-Term Loan****Art. 312**

A. Definition A fixed-term loan is a contract whereby the lender undertakes to transfer the ownership of a sum of money or of other fungible goods to the borrower, who in return undertakes to return objects of the same quantity and quality to him.

**Art. 313**

B. Effect  
I. Interest  
1. Liability for interest

<sup>1</sup> In normal dealings, interest is payable on a fixed-term loan only where this has specifically been agreed.  
<sup>2</sup> In commercial transactions, interest is payable on fixed-term loans even where this has not been expressly agreed.

**Art. 314**

2. Rules governing interest

<sup>1</sup> Where the interest rate is not stipulated in the contract, it is presumed to be the customary rate for loans of the same type at the time and place that the fixed-term loan was received.  
<sup>2</sup> Unless otherwise agreed, the promised interest is payable annually.  
<sup>3</sup> Any prior agreement that interest will be added to the loan principal and become subject to further interest is void, subject to standard business practices and in particular those of savings banks for calculating interest on current accounts and similar commercial instruments under which the calculation of compound interest is customary.

**Art. 315**

II. Limitation period for claims for delivery and acceptance The borrower's claim for delivery and the lender's claim for acceptance of the fixed-term loan become time-barred six months after the date on which the other party defaults.

**Art. 316**

III. Insolvency of the borrower

<sup>1</sup> The lender may refuse to hand over the fixed-term loan if the borrower becomes insolvent after entering into the contract.  
<sup>2</sup> The lender has the right to refuse delivery even if insolvency occurred before the contract was concluded but he only subsequently became aware of it.

**Art. 317**

C. Goods in lieu  
of money

<sup>1</sup> Where the borrower receives securities or goods rather than the agreed sum of money, the amount of the fixed-term loan is deemed to be the current or market price of the securities or goods concerned at the time and place of delivery.

<sup>2</sup> Any agreement to the contrary is void.

**Art. 318**

D. Timing of  
repayment

Where a fixed-term loan contract does not stipulate the repayment date or the period of notice to terminate the contract or the expiry of the contract at any time on first request, the borrower must repay the loan within six weeks of the first request by the lender.

**Title Ten:<sup>96</sup> The Employment Contract****Section One: The Individual Employment Contract****Art. 319**

A. Definition  
and conclusion  
I. Definition

<sup>1</sup> By means of an individual employment contract, the employee undertakes to work in the service of the employer for a limited or unlimited period and the employer undertakes to pay him a salary based on the amount of time he works (time wage) or the tasks he performs (piece work).

<sup>2</sup> A contract whereby an employee undertakes to work regularly in the employer's service by hours, half-days or days (part-time work) is likewise deemed to be an individual employment contract.

**Art. 320**

II. Creation

<sup>1</sup> Except where the law provides otherwise, the individual employment contract is not subject to any specific formal requirement.

<sup>2</sup> It is deemed to have been concluded where the employer accepts the performance of work over a certain period in his service which in the circumstances could reasonably be expected only in exchange for salary.

<sup>3</sup> Where an employee performs work in good faith for the employer under a contract which is subsequently found to be invalid, both parties must discharge their obligations under the employment relationship as if the contract had been valid until such time as one party terminates the relationship on grounds of the invalidity of the contract.

<sup>96</sup> Amended by No I of the FA of 25 June 1971, in force since 1 Jan 1972 (AS 1971 1465; BBl 1967 II 241). See also the Transitional and Final Provisions of Title X Art. 7 at the end of this Code.

**Art. 321**

B. Obligations of the employee  
I. Duty to work in person

The employee must carry out the contractually assumed tasks in person, unless otherwise required by agreement or the circumstances.

**Art. 321a**

II. Duty of care and loyalty

1 The employee must carry out the work assigned to him with due care and loyally safeguard the employer's legitimate interests.

2 He must use the employer's machinery, work tools, technical equipment, installations and vehicles in the appropriate manner and treat them and all materials placed at his disposal for the performance of his work with due care.

3 For the duration of the employment relationship the employee must not perform any paid work for third parties in breach of his duty of loyalty, in particular if such work is in competition with his employer.

4 For the duration of the employment relationship the employee must not exploit or reveal confidential information obtained while in the employer's service, such as manufacturing or trade secrets; he remains bound by such duty of confidentiality even after the end of the employment relationship to the extent required to safeguard the employer's legitimate interests.

**Art. 321b**

III. Disclosure and hand-over of benefits received and work produced

1 The employee is accountable to his employer for everything, and in particular sums of money, he receives from third parties in the performance of his contractual activities and must hand it over to the employer immediately.

2 He must likewise immediately hand over to the employer all work produced in the course of his contractual activities.

**Art. 321c**

IV. Overtime

1 If more hours of work are required than envisaged under the employment contract or provided for by custom, standard employment contract or collective employment contract, the employee is obliged to perform such overtime to the extent that he is able and may conscientiously be expected to do so.

2 In consultation with the employee, the employer may compensate him within an appropriate period for the overtime worked by granting him time off in lieu of at least equal length.

3 Where the overtime is not compensated by time off in lieu and unless otherwise agreed in writing or under a standard employment contract or collective employment contract, the employer must compensate the

employee for the overtime worked by paying him his normal salary and a supplement of at least one-quarter thereof.

#### **Art. 321d**

V. Compliance with general directives and instructions

<sup>1</sup> The employer is entitled to issue general directives and specific instructions regarding the performance of the work and the conduct of employees in his business or household.

<sup>2</sup> The employee must comply in good faith with the employer's general directives and specific instructions.

#### **Art. 321e**

VI. Employee's liability

<sup>1</sup> The employee is liable for any loss or damage he causes to the employer whether wilfully or by negligence.

<sup>2</sup> The extent of the duty of care owed by the employee is determined by the individual employment contract, taking due account of the occupational risk, level of training and technical knowledge associated with the work as well as the employee's aptitudes and skills of which the employer was or should have been aware.

#### **Art. 322**

C. Obligations of the employer  
I. Salary  
1. Type and amount in general

<sup>1</sup> The employer must pay the agreed or customary salary or the salary that is fixed by standard employment contract or collective employment contract.

<sup>2</sup> Where the employee lives in the employer's household, his board and lodgings are part of the salary unless agreement or custom provide otherwise.

#### **Art. 322a**

2. Share in the business results

<sup>1</sup> Where the employee is by contract entitled to a share in the profits, the turnover or the results of the business expressed in some other manner, such share is calculated on the basis of the results for the financial year as defined by statutory provision and generally recognised commercial principles.

<sup>2</sup> The employer must furnish all the necessary information to the employee or, in his stead, to an expert designated by both employer and employee or appointed by the court and must grant the employee or the expert such access to the accounts as is required for verification of the business results.

<sup>3</sup> In addition, where a share in the profits of the business has been agreed, a copy of the profit and loss account must be made available to the employee on request.<sup>97</sup>

#### **Art. 322b**

3. Commission  
a. Entitlement

<sup>1</sup> Where the employee is by contract entitled to commission on particular transactions, his entitlement is established as soon as the transaction with the third party enters into force.

<sup>2</sup> In the case of transactions involving performance in instalments and insurance policies, it may be agreed in writing that such entitlement arises as each instalment falls due or is performed.

<sup>3</sup> The entitlement to commission lapses subsequently if through no fault of his the employer fails to carry out the transaction or the third party fails to fulfil his obligations; in the event of only partial performance, the commission is reduced proportionately.

#### **Art. 322c**

b. Statement

<sup>1</sup> Where the terms of the contract do not require the employee to draw up a statement of commission due to him, on each date on which commission falls due, the employer must provide him with a written statement including a breakdown of the transactions on which it is payable.

<sup>2</sup> The employer must furnish all the necessary information to the employee or, in his stead, to an expert designated by both employer and employee or appointed by the court, and must grant the employee or the expert such access to the books of account or supporting documents as is required for verification of the commission statement.

#### **Art. 322d**

4. Bonuses

<sup>1</sup> Where the employer pays a bonus over and above the salary on particular occasions, such as at Christmas or the end of the financial year, the employee is entitled to such bonus where it is contractually stipulated.

<sup>2</sup> If the employment relationship ends prior to the occasion on which the bonus is paid, the employee is entitled to a pro rata bonus where the contract so provides.

<sup>97</sup> Amended by No I 3 of the FA of 23 Dec 2011 (Financial Reporting Law), in force since 1 Jan 2013 (AS 2012 6679; BBl 2008 1589).

II. Payment of salary  
 1. Payment terms and periods

### Art. 323

<sup>1</sup> Unless shorter periods or other payment terms have been agreed or are customary and unless otherwise provided by standard employment contract or collective employment contract, the salary is paid to the employee at the end of each month.

<sup>2</sup> Unless a shorter payment period has been agreed or is customary, commission is paid at the end of each month; however, where execution of a transaction takes more than half a year, the due date of the commission payable on it may be deferred by written agreement.

<sup>3</sup> Shares in business results are payable as soon as the results are determined, but not later than six months after the end of the financial year.

<sup>4</sup> If an employee is in hardship and requests an advance against salary due for work already performed, the employer must advance such sum as may equitably be expected of him.

2. Withholding of salary

### Art. 323a

<sup>1</sup> To the extent provided for by individual agreement, custom, standard employment contract or collective employment contract, the employer may withhold part of the salary.

<sup>2</sup> The amount withheld on any given payment date must not exceed one-tenth of the salary due and the cumulative amount withheld must not exceed the salary due for one week's work; however, a higher amount may be withheld under the terms of a standard employment contract or collective employment contract.

<sup>3</sup> Unless otherwise provided by individual agreement, custom, standard employment contract or collective employment contract, the salary withheld is deemed to be security for the employer's claims arising from the employment relationship rather than a contractual penalty.

3. Salary protection

### Art. 323b

<sup>1</sup> Unless otherwise provided by agreement or custom, the salary must be paid to the employee in legal tender during working hours; a written salary statement must be provided to the employee.

<sup>2</sup> Where the employer holds claims against the employee, he may set them off against the employee's salary claim only to the extent that such salary claim is subject to attachment, although claims for compensation of intentional damage may be set off without restriction.

<sup>3</sup> Any agreement whereby the salary must be used for the employer's benefit is void.

**Art. 324**

III. Salary in the event work is not possible

1. Failure by employer to accept performance

1 Where the employer is at fault in preventing performance of the work or fails to accept its performance for other reasons, he remains obliged to pay the salary but the employee is not obliged to make up the time thus lost.

2 The salary payable in this event is reduced by any amounts that the employee saved as a result of being prevented from working or that he earned by performing other work or would have earned had he not intentionally foregone such work.

**Art. 324a**

2. Employee prevented from working

a. General principle

1 Where the employee is prevented from working by personal circumstances for which he is not at fault, such as illness, accident, legal obligations or public duties, the employer must pay him his salary for a limited time, including fair compensation for lost benefits in kind, provided the employment relationship has lasted or was concluded for longer than three months.

2 Subject to longer periods being fixed by individual agreement, standard employment contract or collective employment contract, the employer must pay three weeks' salary during the first year of service and thereafter the salary for appropriately longer periods depending on the duration of the employment relationship and the particular circumstances.

3 The employer has the same obligation in the event that an employee becomes pregnant.<sup>98</sup>

4 A written agreement, standard employment contract or collective employment contract may derogate from the above provisions provided it gives the employee terms of at least equivalent benefit.

**Art. 324b**

b. Exceptions

1 If the employee has compulsory insurance prescribed by law against the financial consequences of being prevented from working by personal circumstances for which he is not at fault, the employer is not obliged to pay his salary where the insurance benefits for that limited period cover at least four-fifths of the salary income lost over that period.

2 Where the insurance benefits are less, the employer must pay the difference between them and four-fifths of the salary.

<sup>98</sup> Amended by Annex No 1 to the FA of 3 Oct. 2003, in force since 1 July 2005 (AS 2005 1429; BBl 2002 7522, 2003 1112 2923).

<sup>3</sup> Where the insurance benefits are paid only after a waiting period, the employer must pay at least four-fifths of the salary during that period.<sup>99</sup>

**Art. 325<sup>100</sup>**

IV. Assignment and pledge of salary claims

<sup>1</sup> The employee may assign or pledge his future salary claims as security for maintenance or support obligations under family law only to the extent that such claims are subject to attachment; at the request of an interested party the debt collection office at the employee's domicile determines the amount that is not subject to attachment in accordance with Article 93 of the Federal Act of 11 April 1889<sup>101</sup> on Debt Collection and Bankruptcy.

<sup>2</sup> Any assignment or pledge of future salary claims as security for other obligations is void.

**Art. 326**

V. Piece work  
1. Work allocation

<sup>1</sup> Where by contract the employee carries out piece work for a single employer, the latter must allocate a sufficient quantity of work to him.

<sup>2</sup> The employer may allocate time work to the employee where through no fault of his own the employer is unable to allocate piece work as contractually agreed or where time work is temporarily required for operational reasons.

<sup>3</sup> If the rate of pay for such time work is not fixed by individual agreement, standard employment contract or collective employment contract, the employer must pay the employee the average salary he previously earned on a piece work basis.

<sup>4</sup> An employer who is unable to allocate sufficient piece work or time work remains nonetheless obliged pursuant to the provisions governing failure to accept performance to pay the salary that he would have paid for time work.

**Art. 326a**

2. Piece work rates

<sup>1</sup> Where by contract the employee carries out piece work, the employer must inform him of the applicable rate of pay before the start of each task.

<sup>2</sup> Should the employer fail to give such information, he must pay the going rate for identical or comparable work.

<sup>99</sup> Inserted by Annex No 12 to the FA of 20 March 1981 on Accident Insurance, in force since 1 Jan 1984 (AS 1982 1676 1724 Art. 1 para. 1; BBl 1976 III 141).

<sup>100</sup> Amended by No I of the FA of 14 Dec 1990, in force since 1 July 1991 (AS 1991 974; BBl 1989 III 1233, 1990 I 120).

<sup>101</sup> SR 281.1



**Art. 327**

VI. Work tools,  
materials and  
expenses  
1. Work tools  
and materials

<sup>1</sup> Unless otherwise provided by agreement or custom, the employer provides the employee with the tools and materials that the work requires.

<sup>2</sup> Where the employee himself supplies such tools or materials with the employer's consent, he is entitled to appropriate compensation unless otherwise provided by agreement or custom.

**Art. 327a**

2. Expenses  
a. In general

<sup>1</sup> The employer must reimburse the employee for all expenses necessarily incurred in the performance of the work and, in the case of work done off the employer's premises, for his necessary living expenses.

<sup>2</sup> An individual agreement, standard employment contract or collective employment contract may provide that such expenses be reimbursed in the form of a fixed sum, such as a per diem or a weekly or monthly allowance, provided that this covers all necessary expenses.

<sup>3</sup> Any agreement whereby the employee must bear all or part of such necessary expenses is void.

**Art. 327b**

b. Motor vehicle

<sup>1</sup> Where with the employer's consent the employee uses his own motor vehicle or a vehicle supplied by the employer for business purposes, he is entitled to reimbursement of the normal running and maintenance costs incurred in the performance of his work.

<sup>2</sup> Where with the employer's consent the employee uses his own motor vehicle for work purposes, the employee is also entitled to reimbursement of the tax on the vehicle and the premiums for third-party liability insurance as well as appropriate compensation for wear and tear, to the extent that the vehicle is used for business purposes.

<sup>3</sup> ...<sup>102</sup>

**Art. 327c**

c. Payment dates

<sup>1</sup> Expenses are reimbursed when the salary is paid based on the statement of expenses submitted by the employee, unless a shorter period has been agreed or is customary.

<sup>2</sup> Where an employee regularly incurs expenses in the performance of his contractual obligations, the employer must pay him an advance against such expenses at regular intervals but not less frequently than every month.

<sup>102</sup> Repealed by No 12 of the Annex to the FA of 20 March 1981 on Accident Insurance, with effect from 1 Jan 1984 (AS 1982 1676 1724 Art. 1 para. 1; BBl 1976 III 141).

VII. Protection of the employee's personality rights

1. In general

### Art. 328

<sup>1</sup> Within the employment relationship, the employer must acknowledge and safeguard the employee's personality rights, have due regard for his health and ensure that proper moral standards are maintained. In particular, he must ensure that employees are not sexually harassed and that any victim of sexual harassment suffers no further adverse consequences.<sup>103</sup>

<sup>2</sup> In order to safeguard the personal safety, health and integrity of his employees he must take all measures that are shown by experience to be necessary, that are feasible using the latest technology and that are appropriate to the particular circumstances of the workplace or the household, provided such measures may equitably be expected of him in the light of each specific employment relationship and the nature of the work.<sup>104 105</sup>

### Art. 328a

2. Shared household

<sup>1</sup> Where the employee lives in the employer's household, the employer must provide adequate board and appropriate lodgings.

<sup>2</sup> If the employee is prevented from working through no fault of his own by sickness or accident, the employer must provide care and medical assistance for a limited period, this being three weeks within the first year of service and thereafter for appropriately longer periods depending on the duration of the employment relationship and the particular circumstances.

<sup>3</sup> The employer has the same obligations in the event that an employee is pregnant or gives birth.

### Art. 328b<sup>106</sup>

3. When handling personal data

The employer may handle data concerning the employee only to the extent that such data concern the employee's suitability for his job or are necessary for the performance of the employment contract. In all other respects, the provisions of the Federal Act of 19 June 1992<sup>107</sup> on Data Protection apply.

<sup>103</sup> Sentence inserted by Annex No 3 to the FA of 24 March 1995 on Gender Equality, in force since 1 July 1996 (AS **1996** 1498; BBl **1993** I 1248).

<sup>104</sup> Revised by the Federal Assembly Drafting Committee (Art. 33 ParlPA; AS **1974** 1051).

<sup>105</sup> Amended by Annex No 3 to the FA of 24 March 1995 on Gender Equality, in force since 1 July 1996 (AS **1996** 1498; BBl **1993** I 1248).

<sup>106</sup> Inserted by Annex No 2 to the FA of 19 June 1992 on Data Protection, in force since 1 July 1993 (AS **1993** 1945; BBl **1988** II 413).

<sup>107</sup> SR **235.1**

**Art. 329**

VIII. Days off work, holidays, leave for youth work, maternity leave

1. Days off work<sup>108</sup>

1 The employer must allow the employee one day off per week, generally Sunday or, where circumstances do not permit this, a full weekday instead.

2 In special circumstances, he may allow the employee several days off together or two half-days instead of one full day, provided the employee consents to this.

3 In addition, he must allow the employee the customary hours and days off work and, once notice has been given to terminate the employment relationship, the time required to seek other employment.

4 When determining time off work, due account is to be taken of the interests of both employer and employee.

**Art. 329a**

2. Holidays  
a. Annual entitlement

1 The employer must allow the employee during each year of service at least four weeks' holiday and five weeks' holiday for employees under the age of 20.<sup>109</sup>

2 ...<sup>110</sup>

3 Where an employee has not yet completed one year's service, his holiday entitlement is fixed pro rata.

**Art. 329b**

b. Reduction

1 Where in a given year of service the employee through his own fault is prevented from working for more than a month in total, the employer may reduce his holiday entitlement by one-twelfth for each full month of absence.<sup>111</sup>

2 Where the total absence does not exceed one month in a given year of service and is the result of personal circumstances for which the employee is not at fault, such as illness, accident, legal obligations, public duties or leave for youth work, the employer is not entitled to reduce his holiday entitlement.<sup>112</sup>

3 The employer may not reduce the holiday entitlement of a female employee who is prevented from working by pregnancy for up to two

<sup>108</sup> Amended by Annex No 1 to the FA of 3 Oct. 2003, in force since 1 July 2005 (AS 2005 1429; BBl 2002 7522, 2003 2923, 2004 6641).

<sup>109</sup> Amended by No I of the FA of 16 Dec 1983, in force since 1 July 1984 (AS 1984 580; BBl 1982 III 201).

<sup>110</sup> Repealed by No I of the FA of 16 Dec 1983, with effect from 1 July 1984 (AS 1984 580; BBl 1982 III 201).

<sup>111</sup> Amended by Art. 117 of the FA of 25 June 1982 on Unemployment Insurance, in force since 1 Jan 1984 (AS 1982 2184, 1983 1204; BBl 1980 III 489).

<sup>112</sup> Amended by Art. 13 of the FA of 6 Oct. 1989 on Youth Work, in force since 1 Jan 1991 (AS 1990 2007; BBl 1988 I 825).

months or has received maternity benefits within the meaning of the Loss of Earnings Compensation Act of 25 September 1952<sup>113,114</sup>

<sup>4</sup> A standard employment contract or collective employment contract may derogate from paragraphs 2 and 3 provided that, taken as a whole, it gives employees terms of at least equal benefit.<sup>115</sup>

#### **Art. 329c**

c. Consecutive weeks, timing

<sup>1</sup> The holiday entitlement for a given year of service is generally granted during that year; at least two weeks of holiday must be taken consecutively.<sup>116</sup>

<sup>2</sup> The employer determines the timing of holidays taking due account of the employee's wishes to the extent these are compatible with the interests of the business or household.

#### **Art. 329d**

d. Salary

<sup>1</sup> The employer must pay the employee the full salary due for the holiday entitlement and fair compensation for any lost benefits in kind.

<sup>2</sup> During the employment relationship, the holiday entitlement may not be replaced by monetary payments or other benefits.

<sup>3</sup> If while on holiday, the employee carries out paid work for a third party which harms the employer's legitimate interests, the employer may refuse to pay the salary due for the holidays concerned and may reclaim any salary already paid.

#### **Art. 329e<sup>117</sup>**

3. Leave for extracurricular youth work

<sup>1</sup> During each year of service the employer must grant employees under the age of 30 leave of up to one working week for the purpose of carrying out unpaid leadership, care or advisory activities in connection with extracurricular youth work for cultural or social organisations and for related initial and ongoing training.

<sup>2</sup> The employee has no salary entitlement during such leave for youth work. An individual agreement, standard employment contract or collective employment contract may provide otherwise to the employee's benefit.

<sup>113</sup> SR 834.1

<sup>114</sup> Amended by Annex No 1 to the FA of 3 Oct. 2003, in force since 1 July 2005 (AS 2005 1429; BBl 2002 7522, 2003 1112 2923).

<sup>115</sup> Inserted by No I of the FA of 16 Dec 1983, in force since 1 July 1984 (AS 1984 580; BBl 1982 III 201).

<sup>116</sup> Amended by No I of the FA of 16 Dec 1983, in force since 1 July 1984 (AS 1984 580; BBl 1982 III 201).

<sup>117</sup> Inserted by Art. 13 of the FA of 6 Oct. 1989 on Youth Work, in force since 1 Jan 1991 (AS 1990 2007; BBl 1988 I 825).

<sup>3</sup> The employer and employee should agree on the timing and duration of leave for youth work, having due regard for each other's interests. Where they cannot reach agreement, such leave must be granted on condition that the employee gives two months' advance notice of his intention to exercise his right. Any leave for youth work not taken by the end of the calendar year is forfeited.

<sup>4</sup> At the employer's request, the employee must furnish proof of the activities and functions he has carried out in relation to youth work.

**Art. 329**<sup>118</sup>

4. Maternity  
leave

After having given birth, a female employee is entitled to maternity leave of at least 14 weeks.

**Art. 330**

IX. Other duties  
1. Security

<sup>1</sup> Where the employee furnishes security for performance of his obligations under the employment contract, the employer must keep it separate from his own assets and guarantee its safekeeping.

<sup>2</sup> The employer returns such security at the latest at the end of the employment relationship unless the date of its return has been deferred by written agreement.

<sup>3</sup> Where the employer asserts claims arising from the employment relationship and these are contested, he may retain the security until they are resolved but must at the employee's request deposit any retained security with the court.

<sup>4</sup> In the event of the employer's bankruptcy the employee may demand the return of the security kept separate from the employer's own assets, subject to any claims of the latter arising from the employment relationship.

**Art. 330a**

2. Reference

<sup>1</sup> The employee may at any time request from the employer a reference concerning the nature and the duration of the employment relationship, the quality of his work and his conduct.

<sup>2</sup> At the employee's express request the reference must be limited to the nature and duration of the employment relationship.

<sup>118</sup> Inserted by Annex No 1 to the FA of 3 Oct. 2003, in force since 1 July 2005 (AS 2005 1429; BBl 2002 7522, 2003 1112 2923).

3. Duty of information

**Art. 330b**<sup>119</sup>

<sup>1</sup> Where the employment contract has been concluded for an indefinite duration or for longer than one month, within one month of the beginning of the employment relationship, the employer must inform the employee in writing of:

- a. the names of the contracting parties;
- b. the date of the beginning of the employment relationship;
- c. the employee's function;
- d. the salary and any additional benefits;
- e. the length of the working week.

<sup>2</sup> In the event of changes to the contractual elements that are subject to the duty of information pursuant to paragraph 1 during the employment relationship, the employee must be informed of such changes in writing within one month of their entry into force.

D. Employee benefits provision  
I. Obligations of the employer<sup>120</sup>

**Art. 331**

<sup>1</sup> Where the employer contributes to a employee benefits scheme<sup>121</sup> or the employees make their own contributions, the employer must transfer these contributions to a foundation, a cooperative or a public law institution.

<sup>2</sup> Where the employer's contributions and any made by the employee are used to take out health insurance, personal accident insurance, life assurance, disability insurance or whole life assurance in favour of the employee with a regulated insurance company or a recognised health insurance fund, the employer is not obliged to transfer the contributions as stipulated in the previous paragraph if an independent claim against the insurer would accrue to the employee on the occurrence of the event insured against.

<sup>3</sup> Where the employee is obliged to make contributions to a benefits scheme, the employer must simultaneously contribute an amount at least equal to the total contributions of all his employees; he must finance his contributions from his own funds or from contribution reserves held by the fund which have previously been accumulated by the employer for this purpose and are shown separately in the fund's

<sup>119</sup> Inserted by Art. 2 No 2 of the FA of 17 Dec 2004 approving and implementing the Protocol relating to the extension of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons to new EU member states and approving the revision of the accompanying measures on the free movement of persons, in force since 1 April 2006 (AS 2006 979; BBl 2004 5891 6565).

<sup>120</sup> Amended by Annex No 2 of the Vested Benefits Act of 17 Dec 1993, in force since 1 Jan 1995 (AS 1994 2386; BBl 1992 III 533).

<sup>121</sup> Term in accordance with Annex No 2 of the Vested Benefits Act of 17 Dec 1993, in force since 1 Jan 1995 (AS 1994 2386; BBl 1992 III 533).

accounts. The employer must transfer the contribution deducted from the employee's salary together with his own contribution to the benefits scheme not later than at the end of the first month following the calendar year or insurance year for which the contributions are due.<sup>122</sup>

<sup>4</sup> The employer must furnish the employee with the necessary information regarding his rights and entitlements against a benefits scheme or an insurer.<sup>123</sup>

<sup>5</sup> At the request of the central office for 'Pillar 2' (occupational pension) insurance, the employer must supply any information available to him that might facilitate the location of persons entitled to dormant assets or of the institutions that manage such assets.<sup>124</sup>

### Art. 331a<sup>125</sup>

II. Beginning and end of insurance cover

<sup>1</sup> Benefits cover commences on the date on which the employment relationship begins and ends on the date on which the employee leaves the benefits scheme.

<sup>2</sup> However, he continues to enjoy life assurance and invalidity cover until he joins a new occupational benefits scheme, subject to a maximum period of one month.

<sup>3</sup> The benefits scheme may require the insured to pay premiums for pension insurance maintained after the end of the occupational benefits

### Art. 331b<sup>126</sup>

III. Assignment and pledge

Claims for future benefits may not be validly assigned or pledged before they fall due.

<sup>122</sup> Amended by Annex No 2 to the FA of 3 Oct. 2003 (OPA Revision I), in force since 1 Jan 2005 (AS 2004 1677 1700; BBl 2000 2637).

<sup>123</sup> Amended by Annex No 2 to the FA of 17 Dec 1993 on the Vesting of Occupational Old Age, Survivors' and Invalidity Benefits, in force since 1 Jan 1995 (AS 1994 2386; BBl 1992 III 533).

<sup>124</sup> Inserted by No II 2 of the FA of 18 Dec 1998, in force since 1 May 1999 (AS 1999 1384; BBl 1998 5569).

<sup>125</sup> Amended by Annex No 2 to the FA of 17 Dec 1993 on the Vesting of Occupational Old Age, Survivors' and Invalidity Benefits, in force since 1 Jan 1995 (AS 1994 2386; BBl 1992 III 533).

<sup>126</sup> Amended by Annex No 2 to the FA of 17 Dec 1993 on the Vesting of Occupational Old Age, Survivors' and Invalidity Benefits, in force since 1 Jan 1995 (AS 1994 2386; BBl 1992 III 533).

**Art. 331c**<sup>127</sup>

IV. Reservations  
on medical  
grounds

Occupational benefits schemes may make reservations on medical grounds in relation to invalidity and life policies. Such reservations may be made for a maximum of five years.

**Art. 331d**<sup>128</sup>

V. Promotion of  
home ownership  
1. Pledge

<sup>1</sup> At any time up to three years before becoming entitled to draw retirement benefits, the employee may pledge his entitlement to occupational benefits or an amount up to the limit of his transferable benefits for the purpose of acquiring a property for his own personal use.

<sup>2</sup> The pledge is also permitted for the purpose of acquiring shares in a housing cooperative or similar participatory venture provided a residential unit jointly financed in this manner is for the employee's own personal use.

<sup>3</sup> The pledge is valid only if notified in writing to the benefits scheme.

<sup>4</sup> The amount pledged by employees aged 50 or older must not exceed the transferable benefit entitlement they would have had at 50 or one-half of their transferable benefit entitlement at the time the pledge is given.

<sup>5</sup> Married employees may pledge benefits only with the written consent of their spouse. Where the employee cannot obtain such consent or if it is withheld, the employee may apply to the civil courts.<sup>129</sup> The same applies to registered partnerships.<sup>130</sup>

<sup>6</sup> Where the pledge is realised before the benefits fall due or the cash payment is made, Articles 30*d*, 30*e*, 30*g* and Article 83*a* of the Federal Act of 25 June 1982<sup>131</sup> on Occupational Old Age, Survivors' and Invalidity Pension Provision are applicable.<sup>132</sup>

<sup>7</sup> The Federal Council determines:

- a. the purposes for which the pledge is permissible and the definition of 'own personal use';

<sup>127</sup> Amended by Annex No 2 to the FA of 17 Dec 1993 on the Vesting of Occupational Old Age, Survivors' and Invalidity Benefits, in force since 1 Jan 1995 (AS **1994** 2386; BBl **1992** III 533).

<sup>128</sup> Inserted by No II of the FA of 17 Dec 1993 on the Promotion of Home Ownership using Occupational Pension Benefits, in force since 1 Jan 1995 (AS **1994** 2372; BBl **1992** VI 237).

<sup>129</sup> Second sentence amended by Annex No 1 of the FA of 19 June 2015 (Pension Equality on Divorce), in force since 1 Jan 2017 (AS **2016** 2313; BBl **2013** 4887).

<sup>130</sup> Amended by Annex No 11 to the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan 2007 (AS **2005** 5685; BBl **2003** 1288).

<sup>131</sup> SR **831.40**

<sup>132</sup> Amended by Annex No 1 of the FA of 19 June 2015 (Pension Equality on Divorce), in force since 1 Jan 2017 (AS **2016** 2313; BBl **2013** 4887).



- b. the conditions to be fulfilled for the pledging of entitlements to acquire shares in a housing cooperative or similar participatory venture.

**Art. 331<sup>e133</sup>**

2. Early withdrawal

<sup>1</sup> At any time up to three years before becoming entitled to draw retirement benefits, the employee may claim an amount from his benefits scheme for the purpose of acquiring a property for his own personal use.

<sup>2</sup> Employees under the age of 50 may withdraw an amount up to the limit of their transferable benefits. Employees aged 50 or older are entitled to withdraw no more than the transferable benefit entitlement they would have had at 50 or one-half of their transferable benefit entitlement at the time of the early withdrawal.

<sup>3</sup> The employee may also use such amount for the purpose of acquiring shares in a housing cooperative or similar participatory venture provided a residential unit jointly financed in this manner is for the employee's own personal use.

<sup>4</sup> The early withdrawal brings about an immediate reduction in occupational benefit entitlements in accordance with the benefits scheme regulations and the actuarial basis employed by the benefits scheme. In order to avoid a shortfall in benefits cover resulting from this reduction in benefits in the event of death or disability, the benefits scheme offers supplementary insurance either directly or as broker for a third-party insurer.

<sup>5</sup> Married employees may make such an early withdrawal and any subsequent establishment of a charge on immovable property only with the written consent of their spouse. Where the employee cannot obtain such consent or if it is withheld, the employee may apply to the civil courts. The same applies to registered partnerships.<sup>134</sup>

<sup>6</sup> Where married persons divorce before the benefits fall due, the early withdrawal is deemed a transferable benefit and is divided in accordance with Article 123 of the Civil Code<sup>135</sup>, Articles 280 and 281 CPO<sup>136</sup> and Articles 22–22*b* of the Vested Benefits Act of 17 Decem-

<sup>133</sup> Inserted by No II of the FA of 17 Dec 1993 on the Promotion of Home Ownership using Occupational Pension Benefits, in force since 1 Jan 1995 (AS **1994** 2372; BBl **1992** VI 237).

<sup>134</sup> Amended by Annex No 1 of the FA of 19 June 2015 (Pension Equality on Divorce), in force since 1 Jan 2017 (AS **2016** 2313; BBl **2013** 4887).

<sup>135</sup> SR **210**

<sup>136</sup> SR **272**

ber 1993<sup>137</sup>. The same applies in the event of judicial dissolution of a registered partnership.<sup>138</sup>

<sup>7</sup> If the early withdrawal or pledge of entitlements jeopardises the liquidity of the benefits scheme, the fund may defer execution of the requests concerned. The benefits scheme must lay down in its regulations the order of priority in which early withdrawals or pledges of entitlements will be deferred in such an event. The Federal Council regulates the details.

<sup>8</sup> In other respects Articles 30*d*, 30*e*, 30*g* and Article 83*a* of the Federal Act of 25 June 1982<sup>139</sup> on Occupational Old Age, Survivors' and Invalidity Pension Provision are applicable.<sup>140</sup>

### Art. 331<sup>141</sup>

3. Restrictions if the benefits scheme has a cover deficit

<sup>1</sup> The benefits scheme may provide in its regulations that the pledges of assignments, early withdrawals and repayments may be subject to time or volume restrictions or even refused while the fund has a cover deficit.

<sup>2</sup> The Federal Council determines the conditions under which the restrictions stipulated in para. 1 are permissible and the scope thereof.

### Art. 332<sup>142</sup>

E. Right to inventions and designs

<sup>1</sup> Inventions and designs produced by the employee alone or in collaboration with others in the course of his work for the employer and in performance of his contractual obligations belong to the employer, whether or not they may be protected.

<sup>2</sup> By written agreement, the employer may reserve the right to acquire inventions and designs produced by the employee in the course of his work for the employer but not in performance of his contractual obligations.

<sup>3</sup> An employee who produces an invention or design covered by paragraph 2 must notify the employer thereof in writing; the employer must inform the employee within six months if he wishes to acquire the invention or design or release it to the employee.

<sup>137</sup> SR **831.42**

<sup>138</sup> Amended by Annex 1 of the FA of 19 June 2015 (Pension Equality on Divorce), in force since 1 Jan 2017 (AS **2016** 2313; BBl **2013** 4887).

<sup>139</sup> SR **831.40**

<sup>140</sup> Amended by Annex No 1 of the FA of 19 June 2015 (Pension Equality on Divorce), in force since 1 Jan 2017 (AS **2016** 2313; BBl **2013** 4887).

<sup>141</sup> Inserted by Annex No 2 to the FA of 18 June 2004, in force since 1 Jan 2005 (AS **2004** 4635; BBl **2003** 6399).

<sup>142</sup> Amended by Annex No II to the FA of 5 Oct. 2001 on the Protection of Designs, in force since 1 July 2002 (AS **2002** 1456; BBl **2000** 2729).

<sup>4</sup> Where it is not released to the employee, the employer must pay him separate, appropriate remuneration to be determined with due regard to all pertinent circumstances and in particular the economic value of the invention or design, the degree to which the employer contributed, any reliance on other staff and on the employer's facilities, the expenses incurred by the employee and his position in the company.

**Art. 332a**<sup>143</sup>

**Art. 333**

F. Transfer of  
employment  
relationship  
1. Effects<sup>144</sup>

<sup>1</sup> Where the employer transfers the company or a part thereof to a third party, the employment relationship and all attendant rights and obligations pass to the acquirer as of the day of the transfer, unless the employee refuses such transfer.<sup>145</sup>

<sup>1bis</sup> Where the transferred relationship is governed by a collective employment contract, the acquirer is obliged to abide by it for one year unless it expires or is terminated sooner.<sup>146</sup>

<sup>2</sup> In the event that the employee refuses the transfer, the employment relationship ends on expiry of the statutory notice period; until then, the acquirer and the employee are obliged to perform the contract.

<sup>3</sup> The former employer and the acquirer are jointly and severally liable for any claims of an employee which fell due prior to the transfer or which fall due between that juncture and the date on which the employment relationship could normally be terminated or is terminated following refusal of the transfer.

<sup>4</sup> Moreover, the employer may not transfer the rights arising from an employment relationship to a third party unless otherwise agreed or dictated by the circumstances.

**Art. 333a**<sup>147</sup>

2. Consultation  
of employees'  
organisation

<sup>1</sup> Where the employer transfers the company or a part thereof to a third party, he must inform the organisation that represents the employees or, where there is none, the employees themselves in good time before the transfer takes place of:

<sup>143</sup> Repealed by Annex No II to the FA of 5 Oct. 2001 on the Protection of Designs, with effect from 1 July 2002 (AS 2002 1456; BBl 2000 2729)

<sup>144</sup> Amended by No I of the FA of 17 Dec 1993, in force since 1 May 1994 (AS 1994 804; BBl 1993 I 805).

<sup>145</sup> Amended by No I of the FA of 17 Dec 1993, in force since 1 May 1994 (AS 1994 804; BBl 1993 I 805).

<sup>146</sup> Inserted by No I of the FA of 17 Dec 1993, in force since 1 May 1994 (AS 1994 804; BBl 1993 I 805).

<sup>147</sup> Inserted by No I of the FA of 17 Dec 1993, in force since 1 May 1994 (AS 1994 804; BBl 1993 I 805).

- a. the reason for the transfer;
- b. its legal, economic and social consequences for the employees.

<sup>2</sup> Where measures affecting the employees are envisaged as a result of such transfer, the organisation that represents the employees or, where there is none, the employees themselves must be consulted in good time before the relevant decisions are taken.

**Art. 333b**<sup>148</sup>

3. Transfer of the company on insolvency

If the company or part thereof is transferred during a debt restructuring moratorium, in the course of bankruptcy proceedings or under a composition agreement with assignment of assets, the employment relationship with all rights and obligations is transferred to the acquirer if this has been agreed with the acquirer and the employee does not object to the transfer. In addition, Article 333, with the exception of its paragraph 3, and 333a apply *mutatis mutandis*.

**Art. 334**<sup>149</sup>

G. End of the employment relationship  
I. Fixed-term employment relationship

- <sup>1</sup> A fixed-term employment relationship ends without notice.
- <sup>2</sup> A fixed-term employment relationship tacitly extended beyond the agreed duration is deemed to be an open-ended employment relationship.
- <sup>3</sup> After ten years, any employment relationship contracted for a longer duration may be terminated by either party by giving six months' notice expiring at the end of a month.

**Art. 335**<sup>150</sup>

II. Open-ended employment relationship  
1. Notice in general

- <sup>1</sup> An employment relationship for an unlimited period may be terminated by either party.
- <sup>2</sup> The party giving notice of termination must state his reasons in writing if the other party so requests.

**Art. 335a**<sup>151</sup>

2. Notice periods  
a. In general

- <sup>1</sup> Notice periods must be the same for both parties; where an agreement provides for different notice periods, the longer period is applicable to both parties.

<sup>148</sup> Inserted by the Annex to the FA of 21 June 2013, in force since 1 Jan 2014 (AS 2013 4111; BBl 2010 6455).

<sup>149</sup> Amended by No I of the FA of 18 March 1988, in force since 1 Jan 1989 (AS 1988 1472; BBl 1984 II 551).

<sup>150</sup> Amended by No I of the FA of 18 March 1988, in force since 1 Jan 1989 (AS 1988 1472; BBl 1984 II 551).

<sup>151</sup> Inserted by No I of the FA of 18 March 1988, in force since 1 Jan 1989 (AS 1988 1472; BBl 1984 II 551).

<sup>2</sup> However, where the employer has given notice to terminate the employment relationship or expressed an intention to do so for economic reasons, the employee may be permitted a shorter notice period by individual agreement, standard employment contract or collective employment contract.

**Art. 335b**<sup>152</sup>

b. During the probation period

<sup>1</sup> During the probation period, either party may terminate the contract at any time by giving seven days' notice; the probation period is considered to be the first month of an employment relationship.

<sup>2</sup> Different terms may be envisaged by an individual written agreement, a standard employment contract or a collective employment contract; however, the probation period may not exceed three months.

<sup>3</sup> Where the period that would normally constitute the probation period is interrupted by illness, accident or performance of a non-voluntary legal obligation, the probation period is extended accordingly.

**Art. 335c**<sup>153</sup>

c. After the probation period

<sup>1</sup> The employment relationship may be terminated at one month's notice during the first year of service, at two months' notice in the second to ninth years of service and at three months' notice thereafter, all such notice to expire at the end of a calendar month.

<sup>2</sup> These notice periods may be varied by written individual, standard or collective employment contract; however, they may be reduced to less than one month only by collective employment contract and only for the first year of service.

**Art. 335d**<sup>154</sup>

IIbis. Mass redundancies  
1. Definition

Mass redundancies are notices of termination given by the employer to employees of a business within 30 days of each other for reasons not pertaining personally to the employees and which affect:

1. at least 10 employees in a business normally employing more than 20 and fewer than 100 employees;
2. at least 10% of the employees of a business normally employing at least 100 and fewer than 300 employees;
3. at least 30 employees in a business normally employing at least 300 employees.

<sup>152</sup> Inserted by No I of the FA of 18 March 1988, in force since 1 Jan 1989 (AS 1988 1472; BBl 1984 II 551).

<sup>153</sup> Inserted by No I of the FA of 18 March 1988, in force since 1 Jan 1989 (AS 1988 1472; BBl 1984 II 551).

<sup>154</sup> Inserted by No I of the FA of 17 Dec 1993, in force since 1 May 1994 (AS 1994 804; BBl 1993 I 805).

**Art. 335e**<sup>155</sup>

## 2. Scope of application

<sup>1</sup> The provisions governing mass redundancies apply equally to fixed-term employment relationships terminated prior to expiry of their agreed duration.

<sup>2</sup> They do not apply in the event of cessation of business operations by court order or in the case of mass redundancies due to bankruptcy or under a composition agreement with assignment of assets.<sup>156</sup>

**Art. 335f**<sup>157</sup>

## 3. Consultation of employees' organisation

<sup>1</sup> An employer intending to make mass redundancies must consult the organisation that represents the employees or, where there is none, the employees themselves.

<sup>2</sup> He must give them at least an opportunity to formulate proposals on how to avoid such redundancies or limit their number and how to mitigate their consequences.

<sup>3</sup> He must furnish the organisation that represents the employees or, where there is none, the employees themselves with all appropriate information and in any event must inform them in writing of:

- a. the reasons for the mass redundancies;
- b. the number of employees to whom notice has been given;
- c. the number of employees normally employed in the business;
- d. the period in which he plans to issue the notices of termination.

<sup>4</sup> He must forward a copy of the information stipulated in paragraph 3 to the cantonal employment office.

**Art. 335g**<sup>158</sup>

## 4. Procedure

<sup>1</sup> The employer notifies the cantonal employment office in writing of any intended mass redundancies and forwards a copy of such notification to the organisation that represents the employees or, where there is none, to the employees themselves.

<sup>2</sup> Such notification must contain the results of the consultation with the organisation that represents the employees (Art. 335f) and all appropriate information regarding the intended mass redundancies.

<sup>155</sup> Inserted by No I of the FA of 17 Dec 1993, in force since 1 May 1994 (AS 1994 804; BBl 1993 I 805).

<sup>156</sup> Amended by the Annex to the FA of 21 June 2013, in force since 1 Jan 2014 (AS 2013 4111; BBl 2010 6455).

<sup>157</sup> Inserted by No I of the FA of 17 Dec 1993, in force since 1 May 1994 (AS 1994 804; BBl 1993 I 805).

<sup>158</sup> Inserted by No I of the FA of 17 Dec 1993, in force since 1 May 1994 (AS 1994 804; BBl 1993 I 805).

<sup>3</sup> The cantonal employment office seeks solutions to the problems created by the intended mass redundancies. The organisation that represents the employees or, where there is none, the employees themselves may submit their own comments.

<sup>4</sup> Where notice to terminate an employment relationship has been given within the context of mass redundancies, the relationship ends 30 days after the date on which the mass redundancies were notified to the cantonal employment office unless such notice of termination takes effect at a later date pursuant to statutory or contractual provisions.

**Art. 335h**<sup>159</sup>

5. Social plan  
a. Definition and principles

<sup>1</sup> A social plan is an agreement in which an employer and employees set out measures to avoid redundancies or to reduce their numbers and mitigate their effects.

<sup>2</sup> It must not jeopardise the continued existence of the company.

**Art. 335i**<sup>160</sup>

b. Duty to negotiate

<sup>1</sup> The employer must hold negotiations with the employees with the aim of preparing a social plan if he:

- a. normally employs at least 250 employees; and
- b. intends to make at least 30 employees redundant within 30 days for reasons that have no connection with their persons.

<sup>2</sup> Redundancies over a longer period of time that are based on the same operational decision are counted together.

<sup>3</sup> The employer negotiates:

- a. with the employee associations that are party to the collective employment contract if he is a party to this collective employment contract;
- b. with the organisation representing the employees; or
- c. directly with the employees if there is no organisation representing the employees.

<sup>4</sup> The employee associations, the organisation representing the employees or the employees may invite specialist advisers to the negotiations. These persons must preserve confidentiality in dealings with persons outside the company.

<sup>159</sup> Inserted by the Annex to the FA of 21 June 2013, in force since 1 Jan 2014 (AS 2013 4111; BBl 2010 6455).

<sup>160</sup> Inserted by the Annex to the FA of 21 June 2013, in force since 1 Jan 2014 (AS 2013 4111; BBl 2010 6455).

**Art. 335j**<sup>161</sup>

c. Preparation by an arbitral tribunal

<sup>1</sup> If the parties are unable to agree on a social plan, an arbitral tribunal is appointed.

<sup>2</sup> The arbitral tribunal issues the social plan in a binding arbitral award auf.

**Art. 335k**<sup>162</sup>

d. During bankruptcy or composition proceedings

The provisions on the social plan (Art. 335h–335j) do not apply to mass redundancies that occur during bankruptcy or composition proceedings that are concluded with a composition agreement.

**Art. 336**<sup>163</sup>

III. Protection from termination  
1. Wrongful termination  
a. General principle

<sup>1</sup> Notice of termination is unlawful where given by one party:

- a. on account of an attribute pertaining to the person of the other party, unless such attribute relates to the employment relationship or substantially impairs cooperation within the business;
- b. because the other party exercises a constitutional right, unless the exercise of such right breaches an obligation arising from the employment relationship or substantially impairs cooperation within the business;
- c. solely in order to prevent claims under the employment relationship from accruing to the other party;
- d. because the other party asserts claims under the employment relationship in good faith;
- e.<sup>164</sup> because the other party is performing Swiss compulsory military or civil defence service or Swiss alternative civilian service or a non-voluntary legal obligation.

<sup>2</sup> Further, notice of termination given by the employer is unlawful when given:

- a. because the employee is or is not a member of an employees' organisation or because he carries out trade union activities in a lawful manner;
- b. while the employee is an elected employee representative on the staff council for the business or on a body linked to the

<sup>161</sup> Inserted by the Annex to the FA of 21 June 2013, in force since 1 Jan 2014 (AS 2013 4111; BBl 2010 6455).

<sup>162</sup> Inserted by the Annex to the FA of 21 June 2013, in force since 1 Jan 2014 (AS 2013 4111; BBl 2010 6455).

<sup>163</sup> Amended by No I of the FA of 18 March 1988, in force since 1 Jan 1989 (AS 1988 1472; BBl 1984 II 551).

<sup>164</sup> Amended by Annex No 3 to the FA of 6 Oct. 1995 on Alternative Civilian Service, in force since 1 Oct. 1996 (AS 1996 1445; BBl 1994 III 1609).



business and the employer cannot cite just cause to terminate his employment;

c.<sup>165</sup> in the context of mass redundancies, without his having consulted the organisation that represents the employees or, where there is none, the employees themselves (Art. 335f).

<sup>3</sup> The protection against termination of employment afforded pursuant to paragraph 2 letter b to an employee representative whose mandate has ended as a result of transfer of the employment relationship (Art. 333) continues until such time as the mandate would have expired had such transfer not taken place.<sup>166</sup>

**Art. 336a**<sup>167</sup>

b. Penalties

<sup>1</sup> A party who terminates the employment relationship unlawfully must pay compensation to the other party.

<sup>2</sup> The court determines the compensation taking due account of all the circumstances, though it must not exceed an amount equivalent to six months' salary for the employee. Claims for damages on other counts are unaffected.

<sup>3</sup> Where termination is unlawful pursuant to Article 336 paragraph 2 letter c, compensation may not exceed two months' salary for the employee.<sup>168</sup>

**Art. 336b**<sup>169</sup>

c. Procedure

<sup>1</sup> A party seeking compensation pursuant to Articles 336 and 336a must submit his objection to the notice of termination in writing to the party giving such notice not later than the end of the notice period.

<sup>2</sup> Where the objection has been properly submitted and the parties cannot reach agreement on the continuation of the employment relationship, the party on whom notice was served may bring his claim for compensation. The claim becomes time-barred if not brought before the courts within 180 days of the end of the employment relationship.

<sup>165</sup> Inserted by No I of the FA of 17 Dec 1993, in force since 1 May 1994 (AS 1994 804; BBl 1993 I 805).

<sup>166</sup> Inserted by No I of the FA of 17 Dec 1993, in force since 1 May 1994 (AS 1994 804; BBl 1993 I 805).

<sup>167</sup> Amended by No I of the FA of 18 March 1988, in force since 1 Jan 1989 (AS 1988 1472; BBl 1984 II 551).

<sup>168</sup> Inserted by No I of the FA of 17 Dec 1993, in force since 1 May 1994 (AS 1994 804; BBl 1993 I 805).

<sup>169</sup> Amended by No I of the FA of 18 March 1988, in force since 1 Jan 1989 (AS 1988 1472; BBl 1984 II 551).

**Art. 336c**<sup>170</sup>

2. Termination at an inopportune juncture  
 a. By the employer

<sup>1</sup> After the probation period has expired, the employer may not terminate the employment relationship:

- a.<sup>171</sup> while the other party is performing Swiss compulsory military or civil defence service or Swiss alternative civilian service or, where such service lasts for more than eleven<sup>172</sup> days, during the four weeks preceding or following it;
- b. while the employee through no fault of his own is partially or entirely prevented from working by illness or accident for up to 30 days in the first year of service, 90 days in the second to fifth years of service and 180 days in the sixth and subsequent years of service;
- c. during the pregnancy of an employee and the sixteen weeks following birth;
- d. while the employee is participating with the employer's consent in an overseas aid project ordered by the competent federal authority.

<sup>2</sup> Any notice of termination given during the proscribed periods stipulated in paragraph 1 is void; by contrast, where such notice was given prior to the commencement of a proscribed period but the notice period has not yet expired at that juncture, it is suspended and does not resume until the proscribed period has ended.

<sup>3</sup> Where a specific end-point, such as the end of a month or working week, has been set for termination of the employment relationship and such end-point does not coincide with the expiry of the resumed notice period, the latter is extended until the next applicable end-point.

**Art. 336d**<sup>173</sup>

b. By the employee

<sup>1</sup> After the probation period has expired, the employee may not terminate the employment relationship if he is required to deputise for a hierarchical superior whose function the employee is capable of assuming or for the employer himself who is prevented from working by the reasons set out at Article 336c paragraph 1 letter a.

<sup>2</sup> Article 336c paragraphs 2 and 3 are applicable *mutatis mutandis*.

<sup>170</sup> Amended by No I of the FA of 18 March 1988, in force since 1 Jan 1989 (AS 1988 1472; BBl 1984 II 551).

<sup>171</sup> Amended by Annex No 3 to the FA of 6 Oct. 1995 on Alternative Civilian Service, in force since 1 Oct. 1996 (AS 1996 1445; BBl 1994 III 1609).

<sup>172</sup> Revised by the Federal Assembly Drafting Committee (Art. 33 ParlPA; AS 1974 1051).

<sup>173</sup> Amended by No I of the FA of 18 March 1988, in force since 1 Jan 1989 (AS 1988 1472; BBl 1984 II 551).

**Art. 337**

IV. Termination  
with immediate  
effect

1. Requirements

a. For good  
cause

<sup>1</sup> Both employer and employee may terminate the employment relationship with immediate effect at any time for good cause; the party doing so must give his reasons in writing at the other party's request.<sup>174</sup>

<sup>2</sup> In particular, good cause is any circumstance which renders the continuation of the employment relationship in good faith unconscionable for the party giving notice.

<sup>3</sup> The court determines at its discretion whether there is good cause. However, under no circumstances may the court hold that good cause is constituted by an employee being prevented from working through no fault of his own.

**Art. 337a**

b. Salary at risk

In the event of the employer's insolvency, the employee may terminate the employment relationship with immediate effect unless he is furnished with security for his claims under such relationship within an appropriate period.

**Art. 337b**

2. Consequences

a. Termination  
for good cause

<sup>1</sup> Where the good cause for terminating the employment relationship with immediate effect consists in breach of contract by one party, he is fully liable in damages with due regard to all claims arising under the employment relationship.

<sup>2</sup> In other eventualities the court determines the financial consequences of termination with immediate effect at its discretion, taking due account of all the circumstances.

**Art. 337c<sup>175</sup>**

b. Termination  
without just  
cause

<sup>1</sup> Where the employer dismisses the employee with immediate effect without good cause, the employee is entitled to damages in the amount he would have earned had the employment relationship ended after the required notice period or on expiry of its agreed duration.

<sup>2</sup> Such damages are reduced by any amounts that the employee saved as a result of the termination of the employment relationship or that he earned by performing other work or would have earned had he not intentionally foregone such work.

<sup>174</sup> Amended by No I of the FA of 18 March 1988, in force since 1 Jan 1989 (AS 1988 1472; BBl 1984 II 551).

<sup>175</sup> Amended by No I of the FA of 18 March 1988, in force since 1 Jan 1989 (AS 1988 1472; BBl 1984 II 551).

<sup>3</sup> The court may order the employer to pay the employee an amount of compensation determined at the court's discretion taking due account of all circumstances; however, compensation may not exceed the equivalent of six months' salary for the employee.

#### **Art. 337d**

c. Failure to take up post and departure without just cause

<sup>1</sup> Where the employee fails to take up his post or leaves it without notice without good cause, the employer is entitled to compensation equal to one-quarter of the employee's monthly salary; in addition he is entitled to damages for any further losses.

<sup>2</sup> Where the employer has suffered no losses or lower losses than the value of the compensation stipulated in the previous paragraph, the court may reduce the compensation at its discretion.

<sup>3</sup> Where the claim for damages is not extinguished by set-off, it must be asserted by means of legal action or debt enforcement proceedings within 30 days of the failure to take up the post or departure from it, failing which it becomes time-barred.<sup>176</sup>

<sup>4</sup> ...<sup>177</sup>

#### **Art. 338**

V. Death of the employee or employer  
1. Death of the employee

<sup>1</sup> The employment relationship ends on the death of the employee.

<sup>2</sup> However, the employer must pay the salary for a further month thereafter or, where the employee had completed more than five years of service, for a further two months, provided the employee is survived by a spouse, a registered partner, children who are minors or, in the absence of such heirs, other persons to whom he had a duty to provide support.<sup>178</sup>

#### **Art. 338a**

2. Death of the employer

<sup>1</sup> On the death of the employer, the employment relationship passes to his heirs; the provisions governing transfer of employment relationships on transfer of a business apply *mutatis mutandis*.

<sup>2</sup> Where an employment relationship was entered into with the employer in person, it ends on his death; however, the employee may claim appropriate compensation for losses incurred as a result of the premature termination of the employment relationship.

<sup>176</sup> Amended by No I of the FA of 18 March 1988, in force since 1 Jan 1989 (AS 1988 1472; BBl 1984 II 551).

<sup>177</sup> Repealed by No I of the FA of 18 March 1988, with effect from 1 Jan 1989 (AS 1988 1472; BBl 1984 II 551).

<sup>178</sup> Amended by Annex No 11 to the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan 2007 (AS 2005 5685; BBl 2003 1288).

**Art. 339**

VI. Consequences of termination of the employment relationship  
1. Maturity of claims

<sup>1</sup> When the employment relationship ends, all claims arising therefrom fall due.

<sup>2</sup> In the case of claims for commission on transactions performed partly or entirely after the end of the employment relationship, the due date may be deferred by written agreement, albeit generally for no more than six months, or for no more than one year in the case of transactions involving performance in instalments, and for no more than two years in the case of insurance policies and transactions whose execution takes more than half a year.

<sup>3</sup> The claim for a share of the business results becomes due in accordance with Article 323 paragraph 3.

**Art. 339a**

2. Return

<sup>1</sup> By the time the employment relationship ends, each contracting party must return to the other everything received from him or from third parties for his account during the employment relationship.

<sup>2</sup> In particular, the employee must return motor vehicles and travel tickets and repay advances against salary and expenses to the extent that they exceed his claims.

<sup>3</sup> The contracting parties' rights of lien are unaffected.

**Art. 339b**

3. Severance allowance  
a. Requirements

<sup>1</sup> Where an employment relationship with an employee of at least 50 years of age comes to an end after twenty years or more of service, the employer must pay the employee a severance allowance.

<sup>2</sup> If the employee dies during the employment relationship, such allowance is paid to the surviving spouse, registered partner or children who are minors or, in the absence of such heirs, other persons to whom he had a duty to provide support.<sup>179</sup>

**Art. 339c**

b. Amount and due date

<sup>1</sup> The amount of the severance allowance may be fixed by written individual agreement, standard employment contract or collective employment contract but may never be less than two months' salary for the employee.

<sup>2</sup> Where the amount of the severance allowance is not fixed, the court has discretion to determine it taking due account of all the circum-

<sup>179</sup> Amended by Annex No 11 to the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan 2007 (AS 2005 5685; BBl 2003 1288).

stances, although it must not exceed the equivalent of eight months' salary for the employee.

<sup>3</sup> The severance allowance may be reduced or dispensed with if the employee has terminated the employment relationship without good cause or the employer himself has terminated it with immediate effect for good cause or where the payment of such allowance would inflict financial hardship on him.

<sup>4</sup> The severance allowance is due on termination of the employment relationship, but the due date may be deferred by written individual agreement, standard employment contract or collective employment contract or by court order.

### **Art. 339d**

c. Benefits in lieu of allowance

<sup>1</sup> Where the employee receives benefits from an occupational benefits scheme, these may be deducted from the severance allowance to the extent that they were funded by the employer either directly or through his contributions to the occupational benefits scheme.<sup>180</sup>

<sup>2</sup> The employer is likewise released from his obligation to make a severance allowance to the extent that he gives a binding commitment to make future benefits contributions on the employee's behalf or has a third party give such a commitment.

### **Art. 340**

VII. Prohibition of competition  
1. Requirements

<sup>1</sup> An employee with capacity to act may give the employer a written undertaking to refrain from engaging in any activity that competes with the employer once the employment relationship has ended and in particular to refrain from running a rival business for his own account or from working for or participating in such a business.

<sup>2</sup> The prohibition of competition is binding only where the employment relationship allows the employee to have knowledge of the employer's clientele or manufacturing and trade secrets and where the use of such knowledge might cause the employer substantial harm.

### **Art. 340a**

2. Restrictions

<sup>1</sup> The prohibition must be appropriately restricted with regard to place, time and scope such that it does not unfairly compromise the employee's future economic activity; it may exceed three years only in special circumstances.

<sup>180</sup> Amended by Annex No 2 to the FA of 25 June 1982 on Occupational Old Age, Survivors' and Invalidity Pension Provision, in force since 1 Jan 1985 (AS 1983 797 827 Art. 1 Abs. 1; BBl 1976 I 149).

<sup>2</sup> The court may at its discretion impose restrictions on an excessive prohibition of competition, taking due account of all the circumstances; in particular it will have due regard to any consideration made by the employer.

#### **Art. 340b**

3. Consequences of infringement <sup>1</sup> An employee who infringes the prohibition of competition must provide compensation for the resultant damage to the employer.

<sup>2</sup> Where an employee who infringes the prohibition is liable to pay a contractual penalty, unless otherwise agreed he may exempt himself from the prohibition by paying it; however, he remains liable in damages for any further damage.

<sup>3</sup> Where expressly so agreed in writing, in addition to the agreed contractual penalty and any further damages, the employer may insist that the situation that breaches the contract be rectified to the extent justified by the injury or threat to the employer's interests and by the conduct of the employee.

#### **Art. 340c**

4. Extinction <sup>1</sup> The prohibition of competition is extinguished once the employer demonstrably no longer has a substantial interest in its continuation.

<sup>2</sup> The prohibition is likewise extinguished if the employer terminates the employment relationship without the employee having given him any good cause to do so, or if the employee terminates it for good cause attributable to the employer.

#### **Art. 341**

H. No right of waiver; time limits <sup>1</sup> For the period of the employment relationship and for one month after its end, the employee may not waive claims arising from mandatory provisions of law or the mandatory provisions of a collective employment contract.

<sup>2</sup> General provisions governing limitation periods are applicable to claims under the employment relationship.

#### **Art. 342**

I. Reservation of public law and effects under civil law <sup>1</sup> The following are reserved:

- a.<sup>181</sup> the provisions of the Confederation, cantons and communes regarding employment relationships under public law, except in respect of Article 331 paragraph 5 and Articles 331a–331e;

<sup>181</sup> Amended by No II 2 of the FA of 18 Dec 1998, in force since 1 May 1999 (AS 1999 1384; BBl 1998 5569).

- b. the public law provisions of the Confederation and the cantons governing work and vocational training.

<sup>2</sup> Where federal or cantonal provisions governing work and vocational training impose an obligation under public law on the employer or employee, the other party has a claim under civil law for performance of said obligation if it is susceptible to inclusion in the individual employment contract.

**Art. 343**<sup>182</sup>

## Section Two: Special Individual Employment Contracts

### A.<sup>183</sup> The Apprenticeship Contract

**Art. 344**

I. Definition and conclusion  
1. Definition

An apprenticeship contract is a contract whereby the employer undertakes to provide an apprentice with the requisite training for a particular vocation and the apprentice undertakes to work in the employer's service in order to acquire such training.

**Art. 344a**

2. Conclusion and content

<sup>1</sup> An apprenticeship contract is valid only if it is done in writing.

<sup>2</sup> The contract must stipulate the nature and duration of the vocational training, the salary, the probation period, the working hours and the holiday entitlement.

<sup>3</sup> The probation period must be no less than one month and no longer than three months. Where not stipulated by the parties in the contract, it is three months.

<sup>4</sup> By agreement between the parties and with the consent of the cantonal authority, the probation period may exceptionally be extended before its expiry to a final duration of up to six months.

<sup>5</sup> The contract may contain other terms, in particular regarding the supply of work tools, contributions towards the costs of board and lodgings, the payment of insurance premiums and other obligations to be performed by the parties.

<sup>6</sup> Any agreement restricting the apprentice's freedom to decide his vocational activities once the apprenticeship is complete is void.

<sup>182</sup> Repealed by Annex 1 No II 5 of the Civil Procedure Code of 19 Dec 2008, with effect from 1 Jan 2011 (AS **2010** 1739; BBl **2006** 7221).

<sup>183</sup> Amended by Annex No II 3 to the FA of 13 Dec 2002 on Vocational and Professional Education and Training, in force since 1 Jan 2004 (AS **2003** 4557; BBl **2000** 5686).



II. Effects  
1. Special obligations of the trainee and his legal representative

### Art. 345

1 The apprentice must do his utmost to achieve the goal of the apprenticeship.

2 The apprentice's legal representative must do his best to support the employer in his task and to foster a good relationship between the employer and the apprentice.

2. Special obligations of the employer

### Art. 345a

1 The employer must ensure that the vocational training is supervised by a specialist with the necessary professional skills and personal qualities.

2 He must without deducting any salary allow the apprentice the time required to attend technical college and take interdisciplinary courses and to sit the vocational examinations on completion of the apprenticeship.

3 While the apprentice is still under the age of 20, the employer must grant him a holiday entitlement of at least five weeks per year of apprenticeship.

4 He may allocate work outside the relevant vocational field and piece work to the apprentice only insofar as such work is related to the vocation in which the apprentice is being instructed and the training is not thereby impaired.

III. Termination  
1. Early termination

### Art. 346

1 During the probation period, the apprenticeship relationship may be terminated at any time by giving seven days' notice.

2 The apprenticeship relationship may be terminated with immediate effect for good cause within the meaning of Article 337, and in particular where:

- a. the specialist supervising the training lacks the professional skills or personal qualities required to train the apprentice;
- b. the apprentice does not have the physical or intellectual aptitude required for his training or if his health or morals are in doubt; the apprentice and, where applicable, his legal representative must be heard beforehand;
- c. the training cannot be completed or can only be completed under fundamentally different conditions.

2. Certificate of apprenticeship

### Art. 346a

1 At the end of the apprenticeship, the employer must provide the apprentice with a certificate setting out the requisite information

concerning the vocational training acquired and the duration of the apprenticeship.

<sup>2</sup> At the request of the apprentice or his legal representative, the certificate must also give information on the skills, achievements and conduct of the apprentice.

## B. The Commercial Traveller's Contract

### Art. 347

I. Definition and conclusion  
1. Definition

<sup>1</sup> Under a commercial traveller's contract, the commercial traveller undertakes to broker or conclude all manner of transactions on behalf of the owner of a trading, manufacturing or other type of commercial company off the employer's business premises in exchange for payment of a salary.

<sup>2</sup> Any employee who is not primarily engaged in itinerant activities or who works only occasionally or temporarily for the employer or who acts as a travelling salesman for his own account is not considered a commercial traveller.

### Art. 347a

2. Conclusion and content

<sup>1</sup> The employment relationship is defined by written contract which stipulates in particular:

- a. the duration and termination of the employment relationship;
- b. the commercial traveller's authority;
- c. the remuneration and reimbursement of expenses;
- d. the applicable law and the forum, where one of the parties is resident abroad.

<sup>2</sup> In the absence of a written contract, the matters specified in the previous paragraph are determined by statutory provision and customary working conditions.

<sup>3</sup> An oral agreement is valid only with regard to the commencement of service, the nature and location of the commercial travel and other terms that do not contradict the statutory provisions or the written contract.

### Art. 348

II. Obligations and authority of the commercial traveller  
1. Special obligations

<sup>1</sup> The commercial traveller must visit the clients in the prescribed manner unless there is just cause to vary it; he may neither broker nor conclude transactions on his own behalf or on behalf of a third party without the written consent of the employer.

<sup>2</sup> Where the commercial traveller is authorised to conclude transactions, he must comply with the prescribed prices and other terms and conditions and must declare that any changes thereto are subject to approval by the employer.

<sup>3</sup> The commercial traveller must report regularly on his activities, pass on all orders received immediately to the employer and notify the employer of any matters of note that concern his clients.

#### **Art. 348a**

##### 2. Del credere

<sup>1</sup> Any agreement whereby the commercial traveller is made liable for the client's payment or any other type of performance of the client's obligations or for all or part of the recovery costs is void.

<sup>2</sup> Where the commercial traveller concludes transactions with private individuals, he may by means of a written undertaking assume liability in a given transaction for at most one-quarter of the losses incurred by the employer as a result of non-performance of the client's obligations, on condition that an appropriate del credere commission is agreed.

<sup>3</sup> In the case of insurance policies the travelling insurance broker may by means of a written undertaking assume liability for at most one-half of the recovery costs where a single-payment premium or premium instalments are not paid and he seeks their recovery by way of legal action or compulsory execution.

#### **Art. 348b**

##### 3. Authority

<sup>1</sup> Unless otherwise agreed in writing, a commercial traveller only has authority to broker transactions.

<sup>2</sup> Where the commercial traveller is authorised to conclude transactions, his powers extend to all legal procedures normally associated with their execution; however, without special authority he may not take receipt of payments from clients nor approve payment periods.

<sup>3</sup> Article 34 of the Federal Act of 2 April 1908<sup>184</sup> on Insurance Policies is reserved.

#### **Art. 349**

##### III. Special obligations of the employer 1. Area of activity

<sup>1</sup> Where a particular area or clientele is allocated to the commercial traveller, it is deemed to have been allocated to him exclusively unless otherwise agreed in writing; however, the employer remains authorised to enter into transactions personally within the area or clientele allocated to the commercial traveller.

<sup>2</sup> The employer may unilaterally vary the contractually stipulated area or clientele where legitimate reasons require such variation before

expiry of the notice to terminate the contract; however, where this is the case, the commercial traveller is entitled to compensation and has good cause for termination of the employment relationship.

### **Art. 349a**

2. Salary  
a. In general

<sup>1</sup> The employer must pay the commercial traveller a salary consisting of a fixed salary component with or without commission.

<sup>2</sup> A written agreement whereby the salary consists exclusively or principally of commission is valid only if such commission gives appropriate remuneration for the services of the commercial traveller.

<sup>3</sup> The salary may be freely determined by written agreement for a probation period of no more than two months.

### **Art. 349b**

b. Commission

<sup>1</sup> Where an area or clientele is allocated exclusively to a commercial traveller, the agreed or customary commission is payable to him on all transactions concluded by him or his employer within such area or clientele.

<sup>2</sup> If a particular area or clientele has not been allocated exclusively to him, the commercial traveller is entitled to commission only on transactions that he personally brokered or concluded.

<sup>3</sup> Where it is not yet possible to calculate the precise value of a transaction when the commission falls due, the initial commission payable is based on the minimum value calculated by the employer, with the balance falling due at the latest when the transaction is executed.

### **Art. 349c**

c. Prevention  
from travelling

<sup>1</sup> Where the commercial traveller through no fault of his own is prevented from travelling and his salary must nonetheless be paid to him by law or by contract, it is calculated on the basis of the fixed salary component plus appropriate compensation for loss of commission.

<sup>2</sup> Where the commission makes up less than one-fifth of the salary, it may be agreed in writing that no compensation for loss of commission is owed to him should he be prevented from travelling through no fault of his own.

<sup>3</sup> Where a commercial traveller who is prevented from travelling through no fault of his own receives his full salary, at the employer's request he must carry out work on the business premises to the extent he is capable of such work and it may reasonably be required of him.

**Art. 349d**

## 3. Expenses

<sup>1</sup> Where the commercial traveller works for several employers at the same time and there is no written agreement stipulating how expenses are to be divided, each employer must reimburse an equal share.

<sup>2</sup> Any agreement stipulating that the fixed salary component or commission includes reimbursement of all or part of the expenses is void.

**Art. 349e**

## 4. Special lien

<sup>1</sup> By way of securing claims due to him under the employment relationship and, in the event that the employer becomes insolvent, claims that are not yet due, the commercial traveller has a special lien on chattels and securities and on any payments received from clients by virtue of an authority to collect with which he has been vested.

<sup>2</sup> The lien does not extend to travel tickets, price lists, client lists and other documents.

**Art. 350**

## IV. Termination

## 1. In special circumstances

<sup>1</sup> Where commission makes up at least one-fifth of a commercial traveller's salary and is subject to major seasonal fluctuations, and where the commercial traveller has worked for the employer since the end of the previous season, any notice of termination served on him by the employer during the following season may not expire until the end of the second month following the month in which it was served.

<sup>2</sup> On the same conditions, where a commercial traveller has been retained by an employer until the end of one season any notice of termination given by him during the period prior to the beginning of the following season may not expire until the end of the second month following the month in which it was served.

**Art. 350a**

## 2. Special consequences

<sup>1</sup> At the end of the employment relationship, the commercial traveller is entitled to commission on all the transactions that he concluded or brokered and on all orders passed on to the employer before the end of the employment relationship, whatever the date of their acceptance or execution.

<sup>2</sup> The commercial traveller must return to the employer all samples, patterns and models, price lists, customer lists and other documents supplied to him for his work activities by the end of the employment relationship, subject to the right of lien.

## C. The Homeworke<sup>r</sup>'s Contract

### Art. 351

I. Definition and conclusion  
1. Definition

Under a homeworke<sup>r</sup>'s contract, the homeworke<sup>r</sup><sup>185</sup> undertakes to work for the employe<sup>r</sup> in return for a salary, such work to be carried out alone or with members of his family and in his home or on other premises of his choosing.

### Art. 351a

2. Notification of conditions

<sup>1</sup> Before each work assignment is given to the homeworke<sup>r</sup>, the employe<sup>r</sup> must inform him of the applicable conditions and specifications to the extent these are not already covered by the general terms and conditions of employment; he must specify the materials to be procured by the homeworke<sup>r</sup> and state in writing the amounts to be reimbursed for such materials and the salary.

<sup>2</sup> If information regarding the salary and the amounts to be reimbursed for materials procured by the homeworke<sup>r</sup> is not given in writing before the work is allocated, the customary terms and conditions of employment are applicable.

### Art. 352

II. Special obligations of the home worke<sup>r</sup>  
1. Performance of the work

<sup>1</sup> The homeworke<sup>r</sup> must start the work he has accepted on time, finish it by the agreed deadline and deliver the results to the employe<sup>r</sup>.

<sup>2</sup> If the work is defective and the homeworke<sup>r</sup> is at fault, he is obliged to rectify it at his own expense to the extent that the defects can be removed.

### Art. 352a

2. Materials and work tools

<sup>1</sup> The homeworke<sup>r</sup> is obliged to treat the materials and tools supplied by the employe<sup>r</sup> with all due care, to give account of how they are used and to return tools and unused materials to the employe<sup>r</sup>.

<sup>2</sup> Where in the course of his work the homeworke<sup>r</sup> notes defects in the materials or tools supplied, he must inform the employe<sup>r</sup> immediately and await further instructions before continuing work.

<sup>3</sup> Where the materials or tools supplied have been damaged through the fault of the homeworke<sup>r</sup>, he is liable to the employe<sup>r</sup> at most for the replacement cost.

<sup>185</sup> Term in accordance with Art. 21 no. 1 of the Homeworke<sup>r</sup>ing Act of 20 March 1981, in force since 1 April 1983 (AS 1983 108; BBl 1980 II 282). This amendment is taken into account in Art. 351-354 and 362 para. 1.

III. Special obligations of the employer

1. Acceptance of completed work

### Art. 353

1 The employer must inspect the completed work on delivery and notify the homeworker of any defects within one week.

2 Where the employer fails to notify defects to the homeworker promptly, the work is deemed to have been accepted.

### Art. 353a

2. Salary

a. Payment

1 Where the homeworker is engaged by the employer on a continuous basis, the salary for the work carried out is paid twice monthly or, with the homeworker's consent, at the end of each month, and otherwise on delivery of the completed work.

2 Each salary payment must be accompanied by a written statement giving the reasons for any salary deductions that have been made.

### Art. 353b

b. When prevented from working

1 An employer who engages the home worker on a continuous basis is obliged pursuant to Articles 324 and 324a to pay his salary in the event that the employer fails to accept his work or he is prevented from working by personal circumstances for which he is not at fault.

2 In other cases the employer is not obliged to pay the salary pursuant to Articles 324 and 324a.

### Art. 354

IV. Termination

1 Where trial work is assigned to the homeworker, unless otherwise agreed the employment relationship is deemed to have been entered into on a trial basis for a fixed period.

2 Unless otherwise agreed, where the homeworker is engaged by the employer on a continuous basis, the employment relationship is deemed to have been entered into for an indefinite period, and in all other cases it is deemed to have been entered into for a fixed period.

## D. Applicability of General Provisions

### Art. 355

The general provisions governing individual employment contracts are applicable by way of supplement to apprenticeship contracts, commercial traveller's contracts and homeworker's contracts.

## Section Three: The Collective Employment Contract and the Standard Employment Contract

### A. The Collective Employment Contract

#### Art. 356

1. Definition, content, form and duration

1. Definition and content

<sup>1</sup> A collective employment contract is a contract whereby employers or employers' associations and employees' associations jointly lay down clauses governing the conclusion, nature and termination of employment relationships between the employers and individual employees.

<sup>2</sup> The collective employment contract may also contain other clauses, provided they pertain to the relationship between employers and employees or are limited to the formulation of such clauses.

<sup>3</sup> Further, the collective employment contract may define the mutual rights and obligations of the contracting parties and the monitoring and enforcement of the clauses specified in the previous paragraphs.

<sup>4</sup> Where more than one employers' association and/or employees' association is bound by the collective employment contract either from the outset or as a result of subsequent accession with the consent of the original contracting parties, they have equal rights and obligations thereunder and any contrary agreement is void.

#### Art. 356a

2. Freedom of association and freedom to practise a profession

<sup>1</sup> Any clause in a collective employment contract or individual agreement between the contracting parties intended to compel an employer or employee to join a contracting association is void.

<sup>2</sup> Any clause in a collective employment contract or individual agreement between the contracting parties intended to exclude or restrict the practice of a particular profession or occupation by an employee or his acquisition of the necessary vocational training is void.

<sup>3</sup> The clauses and agreements referred to in the previous paragraph are valid by way of exception if they are justified by overriding interests that warrant protection, in particular personal health and safety or the quality of work; however, denial of access to the profession is not an interest that warrants protection.

#### Art. 356b

3. Accession

<sup>1</sup> Individual employers and individual employees in the service of employers bound by the collective employment contract may accede to it with the consent of the contracting parties, whereupon they become participating employers and employees.

<sup>2</sup> The collective employment contract may stipulate the rules governing such accession. Unreasonable conditions attaching to accession,



such as unreasonable monetary contributions, may be declared void or limited to an admissible level by the court; however, clauses and agreements intended to set contributions in favour of one individual contracting party are always void.

<sup>3</sup> Any clause in a collective employment contract or individual agreement between the contracting parties intended to compel members of associations to accede to the collective employment contract is void if such associations are not entitled to become party to it or to conclude an analogous contract.

### **Art. 356c**

4. Form and duration

<sup>1</sup> The conclusion of a collective employment contract, its amendment and termination by mutual agreement, the accession of a new contracting party and notice to terminate the contract are valid only if done in writing, as are declarations of accession by individual employers or employees, the consent to such accession by the contracting parties pursuant to Article 356b paragraph 1 and notice to withdraw from the contract.

<sup>2</sup> Where the collective employment contract is open-ended and does not provide otherwise, after one year has elapsed any of the contracting parties may withdraw from it at any time by giving six months' notice, which is effective for all other parties. The same applies *mutatis mutandis* to parties subsequently acceding to the contract.

### **Art. 357**

II. Effects  
1. On participating employers and employees

<sup>1</sup> Unless otherwise stipulated in the collective employment contract, its provisions relating to the formation, nature and termination of individual employment relationships are binding on the participating employers and employees for the duration of the contract and may not be derogated.

<sup>2</sup> Any agreement between participating employers and employees that contradicts the compulsory provisions of the collective employment contract is void and replaced by those provisions; however, such an agreement may be valid if it is to the benefit of the employee.

### **Art. 357a**

2. On the contracting parties

<sup>1</sup> The contracting parties are obliged to ensure compliance with the collective employment contract; to this end associations must exert their influence on their members and, where required, have recourse to the means placed at their disposal by their articles of association and the law.

<sup>2</sup> Each contracting party has a duty to maintain harmonious industrial relations and in particular to refrain from any hostile action on matters

regulated by the collective employment contract; such duty applies without restriction only where expressly so agreed.

### Art. 357b

3. Joint enforcement

<sup>1</sup> A collective employment contract concluded between associations may stipulate that each contracting party has an actionable claim against the other parties in the event that they fail to discharge their duty to ensure that the participating employers and employees abide by the contract as regards the following matters:

- a. the formation, nature and termination of employment relationships, in respect of which the claim is for a declaratory judgment only;
- b. the payment of contributions to equalisation funds or other institutions in connection with the employment relationship, the representation of employees within businesses and the maintenance of harmonious industrial relations;
- c. monitoring activities, the provision of security and contractual penalties in relation to the provisions set out in letters a and b.

<sup>2</sup> Clauses within the meaning of the previous paragraph may be agreed where the contracting parties are expressly authorised so to do by their articles of association or resolution passed by their governing body.

<sup>3</sup> Unless otherwise stipulated in the collective employment contract, the provisions governing simple partnerships are applicable *mutatis mutandis* to relations between the contracting parties.

### Art. 358

III. Relationship to mandatory law

The mandatory law of the Confederation and the cantons takes precedence over the collective employment contract; however, other provisions may be agreed to the benefit of employees provided they do not conflict with mandatory law.

## B. The Standard Employment Contract

### Art. 359

I. Definition and content

<sup>1</sup> The standard employment contract is a contract in which clauses governing the formation, nature and termination of certain types of employment relationship are laid down.

<sup>2</sup> The cantons shall draw up standard employment contracts for agricultural workers and domestic staff to regulate in particular working hours, leisure time and employment conditions for female employees and minors.

<sup>3</sup> Article 358 is applicable *mutatis mutandis* to the standard employment contract.

### **Art. 359a**

II. Competent authorities and procedure

<sup>1</sup> Where the scope of application of a standard employment contract extends over more than one canton, the Federal Council is responsible for issuing it, but otherwise the canton is responsible.

<sup>2</sup> Before being issued, the standard employment contract shall be published in an appropriate manner and a time limit set within which interested parties may submit their comments in writing; furthermore, the relevant professional associations and public bodies shall be consulted.

<sup>3</sup> The standard employment contract comes into force once it has been issued in accordance with the provisions governing official publications.

<sup>4</sup> The same procedure applies to the rescission or amendment of a standard employment contract.

### **Art. 360**

III. Effects

<sup>1</sup> Unless otherwise agreed, the standard employment contract applies directly to the employment relationships that it governs.

<sup>2</sup> The standard employment contract may stipulate that agreements derogating from certain of its provisions must be done in writing.

### **Art. 360a**<sup>186</sup>

IV. Minimum wage  
1. Requirements

<sup>1</sup> Where the wages that are customary for a geographical area, occupation or industry are repeatedly and unfairly undercut within a particular occupation or economic sector and there is no collective employment contract laying down a minimum wage that may be declared universally binding, on application by the tripartite commission as defined in Article 360*b*, the competent authority may issue a fixed-term standard employment contract providing for a minimum wage varied by region and, where applicable, by locality in order to combat or prevent abusive practices.

<sup>2</sup> The minimum wage must not conflict with the public interest or prejudice the legitimate interests of other economic sectors or sections of the population. It must have due regard to the minority interests of the economic sectors or occupations concerned that stem from regional and business diversity.

<sup>186</sup> Inserted by Annex No 2 to the FA of 8 Oct. 1999 on Workers posted to Switzerland, in force since 1 June 2004 (AS 2003 1370; BBl 1999 6128).

<sup>3</sup> In the case of repeated infringements of the provisions on the minimum wage in a standard employment contract in accordance with paragraph 1 or if there is evidence that no longer using the standard employment contract may lead to further abusive practices in terms of paragraph 1, at the request of the tripartite commission, the competent authority may extend the standard employment contract for a limited period.<sup>187</sup>

**Art. 360b**<sup>188</sup>

2. Tripartite commissions

<sup>1</sup> The Confederation and each canton shall establish a tripartite commission consisting of an equal number of employers' and employees' representatives in addition to representatives of the state.

<sup>2</sup> Employers' and employees' associations have the right to put forward candidates for selection as their representatives within the meaning of paragraph 1.

<sup>3</sup> The commissions monitor the labour market. If they observe abusive practices within the meaning of Article 360a paragraph 1, they normally seek to reach agreement directly with the employers concerned. Where this cannot be achieved within two months, they petition the competent authority to issue a standard employment contract fixing a minimum wage for the affected sectors or occupations.

<sup>4</sup> If labour market conditions in the affected sectors change, the tripartite commission petitions the competent authority to amend or rescind the standard employment contract.

<sup>5</sup> To enable them to discharge their responsibilities, the tripartite commissions have the right to obtain information and inspect any business document necessary to the conduct of their investigation. In the event of a dispute, a ruling is given by a body specially appointed for this purpose by the Confederation or the canton, as applicable.

<sup>6</sup> Where necessary for the conduct of their investigations, on application the tripartite commissions may obtain personal data contained in corporate collective employment contracts from the Federal Statistical Office.<sup>189</sup>

<sup>187</sup> Inserted by No II of the FA of 30 Sept. 2016, in force since 1 April 2017 (AS 2017 2077; BBl 2015 5845).

<sup>188</sup> Inserted by Annex No 2 to the FA of 8 Oct. 1999 on Workers posted to Switzerland, in force since 1 June 2003 (AS 2003 1370; BBl 1999 6128).

<sup>189</sup> Inserted by Art. 2 No 2 of the FA of 17 Dec 2004 approving and implementing the Protocol relating to the extension of the Agreement between the Swiss Confederation, of the one part, and the EU and its member states, of the other part, on the free movement of persons to new EU member states and approving the revision of the accompanying measures on the free movement of persons, in force since 1 April 2006 (AS 2006 979; BBl 2004 5891 6565).

- Art. 360c**<sup>190</sup>
3. Official secrecy
- 1 The members of tripartite commissions are subject to official secrecy; in particular they are obliged to keep secret from third parties any information of a commercial or private nature gained in the exercise of their office.
- 2 Such duty of secrecy remains in force even after membership of the tripartite commission has ceased.
- Art. 360d**<sup>191</sup>
4. Effects
- 1 The standard employment contract as defined in Article 360a also applies to employees who work only temporarily within its geographical scope and to employees whose services have been loaned out.
- 2 It is not permissible to derogate from a standard employment contract as defined in Article 360a to the detriment of the employee.
- Art. 360e**<sup>192</sup>
5. Associations' right of action
- Employers' and employees' associations have the right to apply for a declaratory judgment as to whether an employer is in compliance with the standard employment contract as defined in Article 360a.
- Art. 360f**<sup>193</sup>
6. Notification
- A canton issuing a standard employment contract pursuant to Article 360a must forward a copy to the competent federal office<sup>194</sup>.

## Section Four: Mandatory Provisions

### Art. 361

- A. Provisions from which no derogation is permissible to the detriment of the employer or the employee
- 1 It is not permissible to derogate from the following provisions to the detriment of either the employer or the employee by individual agreement, standard employment contract or collective employment contract:
- Article 321c: paragraph 1 (overtime);
- Article 323: paragraph 4 (advances);

<sup>190</sup> Inserted by Annex No 2 to the FA of 8 Oct. 1999 on Workers posted to Switzerland, in force since 1 June 2003 (AS **2003** 1370; BBl **1999** 6128).

<sup>191</sup> Inserted by Annex No 2 to the FA of 8 Oct. 1999 on Workers posted to Switzerland, in force since 1 June 2004 (AS **2003** 1370; BBl **1999** 6128).

<sup>192</sup> Inserted by Annex No 2 to the FA of 8 Oct. 1999 on Workers posted to Switzerland, in force since 1 June 2004 (AS **2003** 1370; BBl **1999** 6128).

<sup>193</sup> Inserted by Annex No 2 to the FA of 8 Oct. 1999 on Workers posted to Switzerland, in force since 1 June 2004 (AS **2003** 1370; BBl **1999** 6128).

<sup>194</sup> Now the State Secretariat for Economic Affairs (SECO).

- Article 323*b*: paragraph 2 (set-off against countervailing claims);
- Article 325: paragraph 2 (assignment and pledge of salary claims);
- Article 326: paragraph 2 (allocation of work);
- Article 329*d*: paragraph 2 and 3 (holiday pay);
- Article 331: paragraphs 1 and 2 (employee benefits scheme contributions);
- Article 331*b*: (assignment and pledge of claims to occupational benefits);<sup>195</sup>
- ...<sup>196</sup>
- Article 334: paragraph 3 (termination of long-term employment relationships);
- Article 335: (termination of employment relationships);
- Article 335*k*: (social plan during bankruptcy or composition proceedings)<sup>197</sup>
- Article 336: paragraph 1 (wrongful termination);
- Article 336*a*: (compensation in the event of wrongful termination);
- Article 336*b*: (compensation procedure);
- Article 336*d*: (termination by the employee at an inopportune juncture);
- Article 337: paragraphs 1 and 2 (termination with immediate effect for good cause);
- Article 337*b*: paragraph 1 (consequences of justified termination);
- Article 337*d*: (consequences of failure to take up post or departure without just cause);
- Article 339: paragraph 1 (maturity of claims);
- Article 339*a*: (return);
- Article 340*b*: paragraph 1 and 2 (consequences of infringement of the prohibition of competition);
- Article 342: paragraph 2 (civil law effects of public law);
- ...<sup>198</sup>

<sup>195</sup> Inserted by Annex No 2 to the FA of 17 Dec 1993 on the Vesting of Occupational Old Age, Survivors' and Invalidity Benefits, in force since 1 Jan 1995 (AS 1994 2386; BBl 1992 III 533).

<sup>196</sup> Repealed by Annex No 2 to the FA of 17 Dec 1993 on the Vesting of Occupational Old Age, Survivors' and Invalidity Benefits, with effect from 1 Jan 1995 (AS 1994 2386; BBl 1992 III 533).

<sup>197</sup> Inserted by the Annex to the FA of 21 June 2013, in force since 1 Jan 2014 (AS 2013 4111; BBl 2010 6455).

<sup>198</sup> Repealed by Annex No 5 to the Civil Jurisdiction Act of 24 March 2000, with effect from 1 Jan 2001 (AS 2000 2355; BBl 1999 2829).

Article 346: (early termination of apprenticeship contract);

Article 349c: paragraph 3 (prevention from travelling);

Article 350: (termination in special cases);

Article 350a: paragraph 2 (return).<sup>199</sup>

<sup>2</sup> Any agreement or clause of a standard employment contract or collective employment contract that derogates from the aforementioned provisions to the detriment of the employer or the employee is void.

### Article 362

B. Provisions from which no derogation is permissible to the detriment of the employee

<sup>1</sup> It is not permissible to derogate from the following provisions to the detriment of the employee by individual agreement, standard employment contract or collective employment contract:<sup>200</sup>

Article 321e: (employee's liability);

Article 322a: paragraphs 2 and 3 (share in the business results);

Article 322b: paragraphs 1 and 2 (entitlement to commission);

Article 322c: (statement of commission);

Article 323b: paragraph 1, second sentence (salary statement);

Article 324: (salary where employer fails to accept work);

Article 324a: paragraphs 1 and 3 (salary where employee is prevented from working);

Article 324b: (salary where employee has compulsory insurance);

Article 326: paragraphs 1, 3 and 4 (piece work);

Article 326a: (piece work rates);

Article 327a: paragraph 1 (reimbursement of expenses in general);

Article 327b: paragraph 1 (reimbursement of expenses for motor vehicles);

Article 327c: paragraph 2 (advances for expenses);

Article 328: (protection of the employee's personality rights in general);

Article 328a: (protection of personality rights of employees living in the employer's household);

Article 328b: (protection when handling personal data);<sup>201</sup>

<sup>199</sup> Amended by No I of the FA of 18 March 1988, in force since 1 Jan 1989 (AS 1988 1472; BBl 1984 II 551).

<sup>200</sup> Amended by Annex No 1 to the FA of 3 Oct. 2003, in force since 1 July 2005 (AS 2005 1429; BBl 2002 7522, 2003 1112 2923).

<sup>201</sup> Inserted by Annex No 2 to the FA of 19 June 1992 on Data Protection, in force since 1 July 1993 (AS 1993 1945; BBl 1988 II 413).

- Article 329: paragraphs 1, 2 and 3 (days off work);
- Article 329a: paragraphs 1 and 3 (holiday entitlement);
- Article 329b: paragraphs 2 and 3 (reduction of holiday entitlement);
- Article 329c: (consecutive weeks and timing of holidays);
- Article 329d: paragraph 1 (holiday pay);
- Article 329e: paragraphs 1 and 3 (leave for youth work);<sup>202</sup>
- Article 329f: (maternity leave);<sup>203</sup>
- Article 330: paragraphs 1, 3 and 4 (security);
- Article 330a: (reference);
- Article 331: paragraphs 3 and 4 (contributions and information for employee benefits);
- Article 331a: (beginning and end of insurance cover);<sup>204</sup>  
 ...<sup>205</sup>
- Article 332: paragraph 4 (remuneration for inventions);
- Article 333: paragraph 3 (liability in the event of transfer of employment relationships);
- Article 335i: (duty to negotiate in order to conclude a social plan)<sup>206</sup>
- Article 335j: (preparation of the social plan by an arbitral tribunal)<sup>207</sup>
- Article 336: paragraph 2 (wrongful termination by the employer);
- Article 336c: (termination by the employer at an inopportune juncture);
- Article 337a: (termination with immediate effect because salary is at risk);
- Article 337c: paragraph 1 (consequences of termination without just cause);
- Article 338: (death of the employee);

<sup>202</sup> Inserted by Art. 13 of the FA of 6 Oct. 1989 on Youth Work, in force since 1 Jan 1991 (AS 1990 2007; BBl 1988 I 825).

<sup>203</sup> Inserted by Annex No 12 Annex No 1 to the FA of 3 Oct. 2003, in force since 1 July 2005 (AS 2005 1429; BBl 2002 7522, 2003 1112 2923).

<sup>204</sup> Amended by Annex No 2 to the FA of 17 Dec 1993 on the Vesting of Occupational Old Age, Survivors' and Invalidity Benefits, in force since 1 Jan 1995 (AS 1994 2386; BBl 1992 III 533).

<sup>205</sup> Repealed by Annex No 2 to the FA of 17 Dec 1993 on the Vesting of Occupational Old Age, Survivors' and Invalidity Benefits, with effect from 1 Jan 1995 (AS 1994 2386; BBl 1992 III 533).

<sup>206</sup> Inserted by the Annex to the FA of 21 June 2013, in force since 1 Jan 2014 (AS 2013 4111; BBl 2010 6455).

<sup>207</sup> Inserted by the Annex to the FA of 21 June 2013, in force since 1 Jan 2014 (AS 2013 4111; BBl 2010 6455).



- Article 338a: (death of the employer);
- Article. 339b: (Requirements for severance allowance);
- Article. 339d: (benefits in lieu);
- Article. 340: paragraph 1 (Requirements for prohibition of competition);
- Article. 340a: paragraph 1 (restrictions on prohibition of competition);
- Article. 340c: (extinction of prohibition of competition);
- Article. 341: paragraph 1 (no right of waiver);
- Article. 345a: (obligations of the master<sup>208</sup>);
- Article. 346a: (certificate of apprenticeship);
- Article. 349a: paragraph 1 (commercial traveller's salary);
- Article. 349b: paragraph 3 (payment of commission);
- Article. 349c: paragraph 1 (salary where prevented from travelling);
- Article. 349e: paragraph 1 (commercial traveller's lien);
- Article. 350a: paragraph 1 (commission on termination of the employment relationship);
- Article. 352a: paragraph 3 (home worker's liability);
- Article. 353: (acceptance of completed work);
- Article. 353a: (payment of salary);
- Article. 353b: paragraph 1 (salary where home worker is prevented from working).<sup>209</sup>

<sup>2</sup> Any agreement or clause of a standard employment contract or collective employment contract that derogates from the aforementioned provisions to the detriment of the employee is void.

## **Title Eleven: The Contract for Work and Services**

### **Art. 363**

#### A. Definition

A contract for work and services is a contract whereby the contractor undertakes to carry out work and the customer undertakes to pay him for that work.

<sup>208</sup> Now: the employer.

<sup>209</sup> Amended by No I of the FA of 18 March 1988, in force since 1 Jan 1989 (AS 1988 1472; BBl 1984 II 551).

**Art. 364**

B. Effects  
 I. Contractor's obligations  
 1. In general

<sup>1</sup> The contractor generally has the same duty of care as the employee in an employment relationship.<sup>210</sup>

<sup>2</sup> The contractor is obliged to carry out the work in person or to have it carried out under his personal supervision, unless the nature of the work is such that his personal involvement is not required.

<sup>3</sup> Unless otherwise required by agreement or custom, the contractor is obliged to supply the resources, tools and machinery necessary for performance of the work at his own expense.

**Art. 365**

2. Regarding materials

<sup>1</sup> Where the contractor is responsible for supplying the materials, he is liable to the customer for their quality and has the same warranty obligation as a seller.

<sup>2</sup> Where materials are supplied by the customer, the contractor must treat them with all due care, give account of how they are used and return any that remain unused to the customer.

<sup>3</sup> Where in the course of his work the contractor notes defects in the materials supplied or the designated construction site or any other circumstance arises which might compromise the correct or timely performance of the work, he must inform the customer immediately, failing which he himself will be liable for any adverse consequences.

**Art. 366**

3. Prompt commencement and contractual performance of work

<sup>1</sup> Where the contractor fails to commence the work on time or delays its performance in breach of contract or, through no fault of the customer, falls so far behind that there is no longer any prospect of completing the work on time, the customer is entitled to withdraw from the contract without waiting for the agreed delivery date.

<sup>2</sup> Where during the course of the work it becomes evident that, through the fault of the contractor, the work will be performed in a manner that is defective or otherwise contrary to the agreement, the customer may set or have the court set the contractor an appropriate time limit within which to take remedial action and notify him that any failure to do so will result in the hire of a third party to take such remedial action or to complete the work at the risk and expense of the contractor.

<sup>210</sup> Amended by No II Art. 1 No 6 of the FA of 25 June 1971, in force since 1 Jan 1972 (AS 1971 1465; BBl 1967 II 241). See also the Final and Transitional Provisions of Title X, at the end of this Code.

**Art. 367**

4. Liability for defects  
a. Identification of defects

1 The customer must inspect the condition of the delivered or completed work as soon as feasible in the normal course of business and must inform the contractor of any defects discovered.

2 Each party is entitled to request that the work be inspected by experts at his own expense and that a legal record be made of their findings.

**Art. 368**

b. Rights of the customer in the event of defects

1 Where the work is so defective or deviates from the contractual terms to such an extent that the customer has no use for it or cannot equitably be expected to accept it, the customer may refuse acceptance and, if the contractor is at fault, seek damages.

2 In the case of minor defects in the work or only slight deviations from the contractual terms, the customer may reduce the price in proportion to the decrease in its value or require the contractor to rectify the work at his own expense and to pay damages if he was at fault, provided such rectification is possible without excessive cost to the contractor.

3 In the case of work carried out on the customer's land or property which by its nature cannot be removed without disproportionate detriment to the contractor, the customer has only the rights stipulated in paragraph 2.

**Art. 369**

c. Customer's liability

The rights accruing to the customer in respect of defects in the work are forfeited if he is at fault for such defects due to having given instructions concerning performance of the work that were contrary to the express warnings of the contractor or for any other reason.

**Art. 370**

d. Approval of the work

1 Once the completed work has been expressly or tacitly approved by the customer, the contractor is released from all liability save in respect of defects which could not have been discovered on acceptance and normal inspection or were deliberately concealed by the contractor.

2 Tacit approval is presumed where the customer omits to inspect the work and give notice of defects as provided by law.

3 Where defects come to light only subsequently, the customer must notify the contractor as soon as he becomes aware of them, failing which the work is deemed to have been approved even in respect of such defects.

**Art. 371**<sup>211</sup>

e. Time limits

<sup>1</sup> The right of the customer to bring claims due to defects in the work is limited to two years from acceptance of the work. However, the period amounts to five years where defects in a movable object that has been incorporated in an immovable work in a manner consistent with its nature and purpose have caused the work to be defective.

<sup>2</sup> The customer's claims in respect of defects in an immovable work against both the contractor and any architect or engineer who rendered services in connection with such work become time-barred five years after completion of the work.

<sup>3</sup> Otherwise the rules governing time limits for the corresponding rights of a buyer apply *mutatis mutandis*.

**Art. 372**

II. Customer's obligations

1. Due date for payment

<sup>1</sup> The customer must pay for the work on completion or delivery.

<sup>2</sup> Where the work is delivered in stages and payment in instalments has been agreed, the amount due for each stage of the work is payable on delivery thereof.

**Art. 373**

2. Amount of payment

a. Firm commitment

<sup>1</sup> Where the payment was fixed in advance as an exact amount, the contractor is obliged to perform the work for the agreed amount and may not charge more even if the work entailed more labour or greater expense than predicted.

<sup>2</sup> However, where performance of the work was prevented or seriously hindered by extraordinary circumstances that were unforeseeable or excluded according to the conditions assumed by both parties, the court may at its discretion authorise an increase in the price or the termination of the contract.

<sup>3</sup> The customer must pay the full price even where the work has entailed less labour than predicted.

**Art. 374**

b. By the value of the work

Where the price was not fixed in advance or fixed only as an approximate amount, it is determined according to the value of the work carried out and the expenses incurred by the contractor.

<sup>211</sup> Amended by No I of the FA of 16 March 2012 (Limitation Periods for Guarantee Claims. Extension and Coordination), in force since 1 Jan 2013 (AS 2012 5415; BBl 2011 2889 3903).

**Art. 375**

C. Termination  
I. Withdrawal  
because estimate  
exceeded

1 Where an estimate agreed with the contractor is exceeded by a disproportionate amount through no fault of the customer, he has the right to withdraw from the contract before or after completion.

2 In the case of construction work carried out on his land or property, the customer is entitled to an appropriate reduction in the price or, if the work is not yet complete, to call a halt to the work and withdraw from the contract against equitable compensation for work already done.

**Art. 376**

II. Destruction of  
the work

1 If by accident the work is destroyed prior to completion or delivery, the contractor is not entitled to payment for work done or of expenses incurred unless the customer is in default on acceptance of the work.

2 In this case any loss of materials is borne by the party that supplied them.

3 Where the work has been destroyed either due to a defect in the materials supplied or the construction site designated by the customer or as a result of the method of performance prescribed by him, the contractor is entitled to payment for the work already done and of expenses incurred that were not included in the price, provided he alerted the customer to the risks in good time, and also to damages if the customer was at fault.

**Art. 377**

III. Withdrawal  
by the customer  
against indemnity

The customer may withdraw from the contract at any time before the work is completed provided he pays for work already done and indemnifies the contractor in full.

**Art. 378**

IV. Impossibility  
of performance  
for reasons  
attributable to  
the customer

1 Where completion of the work is rendered impossible by chance occurrence affecting the customer, the contractor is entitled to payment for the work already done and of expenses incurred that were not included in the price.

2 Where the customer is at fault for the impossibility of performance, the contractor may also claim damages.

**Art. 379**

V. Death or  
incapacity of the  
contractor

1 Where the contractor dies or becomes incapable of finishing the work through no fault of his own, the contract for work and services lapses if it was concluded with a view to the personal attributes of the contractor.

<sup>2</sup> The customer is obliged to accept and pay for work already done to the extent it is of use to him.

## **Title Twelve: The Publishing Contract**

### **Art. 380**

#### A. Definition

A publishing contract is a contract whereby the originator – the author of a literary or artistic work or his legal successor – undertakes to entrust the work to a publisher, who undertakes to reproduce and distribute it.

### **Art. 381**

#### B. Effects

##### I. Transfer of copyright and warranty

<sup>1</sup> The author's rights to the work are transferred to the publisher to the extent and for as long as required for performance of the contract.

<sup>2</sup> The originator must give warranty to the publisher that he had the right to make the work available for publication at the time the contract was concluded and, where it is subject to copyright protection, that he holds the copyright.

<sup>3</sup> Where all or part of the work has already been made available for publication to a third party or the originator is aware that it has already been published, he must inform the publisher before entering into the contract.

### **Art. 382**

#### II. Originator's power of disposal

<sup>1</sup> As long as the editions of the work to which the publisher is entitled have not yet been exhausted, the originator may not make other arrangements regarding the work or parts thereof to the publisher's detriment.

<sup>2</sup> Newspaper articles or relatively short passages of magazine copy may be published elsewhere by the originator at any time.

<sup>3</sup> Contributions to collections or anthologies and relatively lengthy magazine articles must not be published elsewhere by the originator within three months of the appearance in print of such contribution or article.

### **Art. 383**

#### III. Number of editions

<sup>1</sup> Where no clause was agreed that stipulates the number of editions, the publisher is entitled to produce only one.

<sup>2</sup> Where nothing was agreed, the publisher determines the size of the edition but at the originator's request must print at least enough to

generate reasonable sales, and once the first print run is completed he must not print any further copies.

<sup>3</sup> Where the publishing contract confers publishing rights for several or all editions of a work and the publisher fails to produce a new edition after the previous edition is exhausted, the originator may have the court set a time limit for the publication of a new edition, failing which the publisher forfeits such rights.

#### **Art. 384**

IV. Publication and sale

<sup>1</sup> The publisher is obliged to publish the work in an appropriate format without abridgment, addition or alteration, to take reasonable steps to publicise the work and to devote the customary resources in order to promote sales thereof.

<sup>2</sup> He must fix the price at his discretion but not so high as to hinder sales of the work.

#### **Art. 385**

V. Improvements and corrections

<sup>1</sup> The author retains the right to correct and improve his work provided this does not prejudice the interests or increase the liability of the publisher, but must compensate the publisher for any unforeseen costs incurred as a result.

<sup>2</sup> The editor may not produce a new version, edition or print run of the work without having previously given the author the opportunity to improve it.

#### **Art. 386**

VI. Collected and separate editions

<sup>1</sup> The right to publish different works by the same author separately does not entail the right to publish them together in collected edition.

<sup>2</sup> Similarly, the right to publish the complete works of an author or all of his works in a given genre does not give the publisher the right to publish the individual works separately.

#### **Art. 387**

VII. Translation rights

Unless otherwise agreed with the publisher, the originator retains the exclusive right to commission a translation of the work.

#### **Art. 388**

VIII. Author's remuneration  
1. Amount

<sup>1</sup> The originator is deemed entitled to remuneration where in the circumstances the presumption is that publication of the work would necessarily involve such remuneration.

<sup>2</sup> The amount thereof is fixed by the court on the basis of expert opinion.

<sup>3</sup> Where the publisher is entitled to produce several editions, the presumption is that the level of remuneration and the other terms and conditions for subsequent editions are the same as for the first edition.

### Art. 389

2. Due date for payment, record of sales and complimentary copies

<sup>1</sup> The remuneration is payable as soon as the complete work or, in the case of works appearing in separate parts (volumes, fascicles, issues), each part thereof is printed and ready for distribution.

<sup>2</sup> Where the remuneration is made partly or entirely contingent on expected sales, the publisher is obliged to produce the customary record of sales with corroborating documentation.

<sup>3</sup> Unless otherwise agreed, the originator is entitled to receive the customary number of complimentary copies.

### Art. 390

C. Termination  
I. Destruction of the work

<sup>1</sup> If the work is destroyed by chance after delivery to the publisher, he remains obliged to pay the author's remuneration.

<sup>2</sup> If the author has a second copy of the destroyed work, he must make it available to the publisher, and otherwise he must recreate the work where this is possible with little effort.

<sup>3</sup> In either case he is entitled to appropriate compensation.

### Art. 391

II. Destruction of the edition

<sup>1</sup> If an edition already produced by the publisher is partly or entirely destroyed by chance prior to its distribution, the publisher is entitled to replace the destroyed copies at his own expense without giving rise to a claim for additional remuneration on the part of the originator.

<sup>2</sup> The publisher is obliged to replace the destroyed copies where this is possible without disproportionate expense.

### Art. 392

III. Grounds for termination pertaining to the person of the author or the publisher

<sup>1</sup> The contract is extinguished on the death or incapacity of the author before the work is completed or in the event that the author is prevented from completing it through no fault of his own.

<sup>2</sup> By way of exception, the court may authorise the full or partial continuation of the contract, where this is deemed both feasible and equitable, and order any necessary measures.

<sup>3</sup> In the event of the publisher's bankruptcy, the originator may entrust the work to another publisher unless he is furnished with security for



performance of the publishing obligations not yet due at the time bankruptcy proceedings were commenced.

### Art. 393

D. Work on a project originated by the publisher

1 Where one or more authors accept a commission to work on a project originated by a publisher, they are entitled only to the agreed remuneration.

2 The publisher owns the copyright to the work as a whole.

## Title Thirteen: The Agency Contract

### Section One: The Simple Agency Contract

#### Art. 394

A. Definition

1 An agency contract is a contract whereby the agent undertakes to conduct certain business or provide certain services in accordance with the terms of the contract.

2 Contracts for the provision of work or services not covered by any other specific type of contract are subject to the provisions governing agency.

3 Remuneration is payable where agreed or customary.

#### Art. 395

B. Conclusion of the contract

An agency contract is deemed to have been accepted where it has not been declined immediately and relates to business which is conducted by the agent by official appointment or on a professional basis or for which he has publicly offered his services.

#### Art. 396

C. Effects  
I. Scope of agency

1 Unless expressly defined by the contract, the scope of the agency is determined by the nature of the business to which it relates.

2 In particular, it includes the authority to carry out such transactions as are required for performance of the contract.

3 The agent requires special authority to agree a settlement, accept an arbitration award, contract bill liabilities, alienate or encumber land or make gifts.<sup>212</sup>

<sup>212</sup> Amended by Annex 1 No II 5 of the Civil Procedure Code of 19 Dec 2008, in force since 1 Jan 2011 (AS 2010 1739; BBl 2006 7221).

**Art. 397**

II. Obligations of the agent  
1. Compliance with instructions

<sup>1</sup> An agent who has received instructions from the principal on how to conduct the business entrusted to him may deviate from them only to the extent that circumstances prevent him from obtaining the principal's permission and that he may safely assume such permission would have been forthcoming had the principal been aware of the situation.

<sup>2</sup> Where such conditions are not satisfied and the agent nevertheless deviates from the principal's instructions to the latter's detriment, the agency contract is deemed to have been performed only if the agent accepts liability for the resultant damage.

**Art. 397a**<sup>213</sup>

1bis. Duty to notify

If it is anticipated that the principal will become permanently incapable of judgement, the agent must notify the adult protection authority at the principal's domicile if such notification appears appropriate in order to safeguard the interests concerned.

**Art. 398**

2. Faithful performance  
a. In general

<sup>1</sup> The agent generally has the same duty of care as the employee in an employment relationship.<sup>214</sup>

<sup>2</sup> The agent is liable to the principal for the diligent and faithful performance of the business entrusted to him.

<sup>3</sup> He must conduct such business in person unless authorised or compelled by circumstance to delegate it to a third party or where such delegation is deemed admissible by custom.

**Art. 399**

b. In the event of delegation

<sup>1</sup> An agent who has delegated the business entrusted to him to a third party without authority is liable for the latter's actions as if they were his own.

<sup>2</sup> Where such delegation was authorised, he is liable only for any failure to act with due diligence when selecting and instructing the third party.

<sup>3</sup> In both cases, claims held by the agent against the third party may be enforced by the principal directly against the third party.

<sup>213</sup> Inserted by Annex No 10 of the FA of 19 Dec 2008 (Adult Protection, Law of Persons and Law of Children), in force since 1 Jan 2013 (AS **2011** 725; BBl **2006** 7001).

<sup>214</sup> Amended by No II Art. 1 No 7 of the FA of 25 June 1971, in force since 1 Jan 1972 (AS **1971** 1465; BBl **1967** II 241). See also the Final and Transitional Provisions of Title X, at the end of this Code.

**Art. 400**

3. Account of  
agency

1 The agent is obliged at the principal's request, which may be made at any time, to give an account of his agency activities and to return anything received for whatever reason as a result of such activities.

2 He must pay interest on any sums which he is late in forwarding to the principal.

**Art. 401**

4. Transfer of  
acquired rights

1 Where the agent acting on the principal's behalf acquires claims in his own name against third parties, such claims pass to the principal provided he has fulfilled all his obligations towards the agent under the agency relationship.

2 The same applies in relation to the agent's assets if the agent is bankrupt.

3 Similarly, where the agent is bankrupt, the principal may claim chattels of which the agent took possession in his own name but on the principal's behalf, subject to the agent's own rights of lien.

**Art. 402**

III. Obligations  
of the principal

1 The principal is obliged to reimburse the agent for expenses incurred in the proper performance of the agency contract plus interest and to release him from obligations entered into.

2 The principal must also compensate the agent for any loss or damage incurred in performance of the agency contract unless the principal can prove that the damage occurred through no fault of his own.

**Art. 403**

IV. Liability of  
joint principals  
and agents

1 Where several persons conclude an agency contract as principals, they are jointly and severally liable to the agent.

2 Where several persons conclude an agency contract as agents, they are jointly and severally liable to the principal and, save to the extent they are authorised to delegate to third parties, may commit the principal only through joint action.

**Art. 404**

D. Termination  
I. Grounds  
1. Revocation,  
termination

1 The agency contract may be revoked or terminated at any time by either party.

2 However, a party doing so at an inopportune juncture must compensate the other for any resultant damage.

2. Death,  
incapacity,  
bankruptcy

### Art. 405

<sup>1</sup> Unless otherwise agreed or implied by the nature of the agency business, the agency contract ends on loss of capacity to act, bankruptcy, death or declaration of presumed death of the principal or the agent.<sup>215</sup>

<sup>2</sup> However, where termination of the agency contract jeopardises the principal's interests, the agent, his heir or his representative is obliged to continue conducting the agency business until such time as the principal, his heir or his representative is able to conduct it himself.

### Art. 406

II. Effects of  
extinction of the  
contract

Actions taken by the agent before he became aware of the termination of the agency contract are binding on the principal or his heir as if the contract had still been in force.

## Section One<sup>bis</sup>,<sup>216</sup>

### The Marriage or Partnership Brokerage Contract

#### Art. 406a

A. Definition  
and applicable  
law

<sup>1</sup> A person assuming the role of agent under a marriage or partnership brokerage contract undertakes, in exchange for remuneration, to introduce the principal to persons who are potential spouses or long-term partners.

<sup>2</sup> The provisions governing simple agency contracts are applicable by way of supplement to marriage or partnership brokerage contracts.

#### Art. 406b

B. Introduction  
of or to foreign  
nationals  
I. Costs of return  
journey

<sup>1</sup> Where the person to be introduced travels from or to a foreign destination, the agent must reimburse the costs of the return journey if this takes place within six months of arrival.

<sup>2</sup> Where the local authority has borne such costs, it is subrogated to the claim held by the person introduced against the agent.

<sup>3</sup> The agent may claim reimbursement of such travel costs from the principal only up to the maximum amount stipulated in the contract.

<sup>215</sup> Amended by Annex No 10 of the FA of 19 Dec 2008 (Adult Protection, Law of Persons and Law of Children), in force since 1 Jan 2013 (AS 2011 725; BBl 2006 7001).

<sup>216</sup> Inserted by Annex No 2 to the FA of 26 June 1998, in force since 1 Jan 2000 (AS 1999 1118; BBl 1996 11).

**Art. 406c**

II. Duty to obtain a licence

<sup>1</sup> Professional marriage and partnership brokerage activities involving foreign nationals require a licence issued by the authority designated by cantonal law and are regulated by that authority.

<sup>2</sup> The Federal Council issues the implementing provisions and determines in particular:

- a. licence requirements and durations;
- b. the penalties imposed on the agent in the event of infringements;
- c. the obligation of the agent to furnish security for the costs of repatriating persons introduced under the contract.

**Art. 406d**

C. Form and content of the contract

The contract must be done in writing and contain the following information:

1. the name and address of each party;
2. the number and nature of the services that the agent undertakes and the amount of the remuneration and costs, in particular registration fees, corresponding to each service;
3. the maximum amount owed to the agent by way of reimbursement for his defraying the costs of return journeys of persons travelling to or from foreign countries (Art. 406b);
4. the terms of payment;
- 5.<sup>217</sup> the right of the principal to give written notice of the revocation of his offer to enter into the contract or of his acceptance of the offer without compensation within 14 days;
- 6.<sup>218</sup> the stipulation that the agent is prohibited from accepting any payment before the 14-day period has expired;
7. the right of the principal to terminate the contract at any time, subject to any liability in damages arising from termination at an inopportune juncture.

**Art. 406e<sup>219</sup>**

D. Entry into force, revocation, notice of termination

<sup>1</sup> The contract does not become binding on the principal until 14 days after he receives a duplicate signed by both parties. The agent must not

<sup>217</sup> Amended by No I of the FA of 19 June 2015 (Revision of the right of revocation), in force since 1 Jan 2016 (AS 2015 4107; BBl 2014 921 2993).

<sup>218</sup> Amended by No I of the FA of 19 June 2015 (Revision of the right of revocation), in force since 1 Jan 2016 (AS 2015 4107; BBl 2014 921 2993).

<sup>219</sup> Amended by No I of the FA of 19 June 2015 (Revision of the right of revocation), in force since 1 Jan 2016 (AS 2015 4107; BBl 2014 921 2993).

accept any payment from the principal before the 14-day period has expired.

<sup>2</sup> During the period under paragraph 1, the principal may give written notice of the revocation of his offer to enter into the contract or of his acceptance of the offer. Any advance waiver of this right is invalid. In addition, the provisions on the consequences of revocation (Art. 40f) apply *mutatis mutandis*.

<sup>3</sup> Notice of termination must be done in writing.

**Art. 406<sup>f</sup>**<sup>220</sup>

E. ...

**Art. 406g**

F. Information and data protection

<sup>1</sup> Before the contract is signed and throughout its duration, the agent must inform the principal of any particular difficulties pertaining to the latter's personal circumstances that might arise in the performance of the obligations thereunder.

<sup>2</sup> When processing the principal's personal data, the agent is bound by a duty of discretion; the provisions of the Federal Act of 19 June 1992<sup>221</sup> on Data Protection are reserved.

**Art. 406h**

G. Reduction

Where excessive remuneration or expenses have been agreed, the principal may apply to the court to reduce these to an appropriate amount.

**Section Two:  
The Letter of Credit and the Loan Authorisation**

**Art. 407**

A. Letter of credit

<sup>1</sup> The provisions governing agency and payment instructions are applicable to letters of credit in which the principal instructs the addressee to pay a specified person the sums requested by the latter, whether or not a maximum amount is stipulated.

<sup>2</sup> Where the letter of credit does not stipulate a maximum amount and obviously disproportionate amounts are requested, the addressee must notify the principal and withhold payment pending further instructions.

<sup>220</sup> Repealed by No I of the FA of 19 June 2015 (Revision of the right of revocation), with effect from 1 Jan 2016 (AS 2015 4107; BBl 2014 921 2993).

<sup>221</sup> SR 235.1

<sup>3</sup> The instruction conveyed by means of a letter of credit is deemed to have been accepted only where acceptance of a specified amount has been declared.

#### **Art. 408**

B. Loan  
authorisation  
I. Definition and  
form

<sup>1</sup> Where a person has received and accepted an order to act as an agent in granting or renewing a loan to a third party in his own name and for his own account but on the authorisation of the principal, the principal is liable for the payee's obligation in the same manner as a surety, provided that the agent has not exceeded his authority.

<sup>2</sup> The principal incurs such liability only where the authorisation was given in writing.

#### **Art. 409**

II. Incapacity of  
payee to enter  
into a contract

The principal may not plead as defence against the agent the fact that the payee did not have personal capacity to enter into the contract.

#### **Art. 410**

III. Payment  
extension  
granted on own  
authority

The principal ceases to be liable for the obligation where the agent has on his own authority granted the payee an extension of the term of payment or has neglected to proceed against him as instructed by the principal.

#### **Art. 411**

IV. Borrower  
and principal

The legal relationship between the principal and the third party granted a loan is subject to the provisions governing the legal relationship between the surety and the principal debtor.

### **Section Three: The Brokerage Contract**

#### **Art. 412**

A. Definition  
and form

<sup>1</sup> A brokerage contract is a contract whereby the broker is instructed to alert the principal to an opportunity to conclude a contract or to facilitate the conclusion of a contract in exchange for a fee.

<sup>2</sup> The brokerage contract is generally subject to the provisions governing simple agency contracts.

#### **Art. 413**

B. Broker's fee  
I. When due

<sup>1</sup> The broker's fee becomes payable as soon as the information he has given or the intermediary activities he has carried out result in the conclusion of the contract.

<sup>2</sup> Where the contract is concluded subject to a condition precedent, the fee becomes due only once such condition has been satisfied.

<sup>3</sup> Where the principal has contractually undertaken to reimburse the broker's expenses, the broker may request such reimbursement even if the transaction fails to materialise.

**Art. 414**

II. Fixing the fee Where the amount of remuneration is not stipulated, the parties are deemed to have agreed a fee determined by the tariff of fees, where such exists, and otherwise by custom.

**Art. 415**

III. Forfeiture Where the broker acts in the interests of a third party in breach of the contract or procures a promise of remuneration from such party in circumstances tantamount to bad faith, he forfeits his right to a fee and to any reimbursement of expenses.

**Art. 416**<sup>222</sup>

IV. ...

**Art. 417**<sup>223</sup>

V. Excessive fees Where an excessive fee has been agreed for identifying an opportunity to enter into or facilitating the conclusion of an individual employment contract or a purchase of land or buildings, on application by the debtor the court may reduce the fee to an appropriate amount.

**Art. 418**

C. Reservation of cantonal law The cantons reserve the right to enact special regulations governing stockbrokers, official brokers and employment agencies.

<sup>222</sup> Repealed by Annex No 2 to the FA of 26 June 1998, with effect from 1 Jan 2000 (AS 1999 1118; BBl 1996 I 1).

<sup>223</sup> Amended by No II, Art. 1, No 8 of the FA of 25 June 1971, in force since 1 Jan 1972 (AS 1971 1465; BBl 1967 II 241). See also the Final and Transitional Provisions of Title X, at the end of this Code.



## Section Four:<sup>224</sup> The Commercial Agency Contract

### Art. 418a

A. General  
I. Definition

<sup>1</sup> An agent is a person who undertakes to act on a continuous basis as an intermediary for one or more principals in facilitating or concluding transactions on their behalf and for their account without entering into an employment relationship with them.<sup>225</sup>

<sup>2</sup> Unless otherwise agreed in writing, the provisions of this Section also apply to persons acting as agents by way of secondary occupation. The provisions governing *del credere*, prohibition of competition and termination of contracts for good cause may not be excluded to the detriment of the agent.

### Art. 418b

II. Applicable  
law

<sup>1</sup> The provisions governing brokerage contracts apply by way of supplement to agents acting as intermediaries and those governing commissions apply by way of supplement to agents acting as proxies.

<sup>2</sup> ...<sup>226</sup>

### Art. 418c

B. Obligations of  
the agent  
I. General and  
*del credere*

<sup>1</sup> The agent must safeguard the principal's interests with the diligence of a prudent businessman.

<sup>2</sup> Except where otherwise agreed in writing, the agent may also act for other principals.

<sup>3</sup> He may assume liability for the client's payment or any other type of performance of the client's obligations or for all or part of the costs of recovering receivables only by means of a written undertaking. The agent thereby acquires an inalienable entitlement to adequate special remuneration.

### Art. 418d

II. Duty of  
discretion and  
prohibition of  
competition

<sup>1</sup> The agent must not exploit or reveal the principal's trade secrets with which he has been entrusted or of which he became aware by reason of the agency relationship even after the end of the commercial agency contract.

<sup>224</sup> Inserted by No I of the FA of 4 Feb. 1949, in force since 1. Jan 1950 (AS 1949 I 802; BBl 1947 III 661). See also the Final and Transitional Provisions of Title XIII, at the end of this Code.

<sup>225</sup> Amended by No II Art. 1 No 8 and 9 of the FA of 25 June 1971, in force since 1 Jan 1972 (AS 1971 1465; BBl 1967 II 241). See also the Final and Transitional Provisions of Title X, at the end of this Code.

<sup>226</sup> Repealed by No 1 let. b of the Annex to the FA of 18 Dec 1987 on Private International Law (IPLA), with effect from 1 Jan 1989 (AS 1988 1776; BBl 1983 I 263).

<sup>2</sup> The provisions governing service contracts are applicable *mutatis mutandis* to a contractual prohibition of competition. Where such a prohibition has been agreed, on termination of the contract the agent has an inalienable entitlement to adequate special remuneration.

**Art. 418e**

C. Powers of representation

<sup>1</sup> The agent is considered to be authorised only to facilitate transactions, to receive notices of defects and other declarations whereby clients exercise or reserve their rights in respect of defective performance by the principal, and to exercise the principal's rights to secure evidence thereof.

<sup>2</sup> By contrast, the agent is not considered to be authorised to accept payments, to grant time limits for payments or to agree other modifications of the contract with clients.

<sup>3</sup> Articles 34 and 44 paragraph 3 of the Federal Act of 2 April 1908 on Insurance Policies<sup>227</sup> are reserved.

**Art. 418f**

D. Obligations of the principal  
I. In general

<sup>1</sup> The principal must do everything in his power to enable the agent to perform his activities successfully. In particular, he must furnish the agent with the necessary documentation.

<sup>2</sup> He must notify the agent immediately if he anticipates that the number and/or volume of transactions that will be possible or desirable is likely to be substantially smaller than was agreed or to be expected in the circumstances.

<sup>3</sup> Where a particular area or clientele is allocated to the agent, it is allocated to him exclusively unless otherwise agreed in writing.

**Art. 418g**

II. Commission  
1. On business facilitated and concluded  
a. Scope and entitlement

<sup>1</sup> The agent is entitled to the agreed or customary commercial agent's commission or sales commission on all transactions that he facilitated or concluded during the agency relationship and, unless otherwise agreed in writing, on transactions concluded during the agency relationship by the principal without the agent's involvement but with clients acquired by him for transactions of that kind.

<sup>2</sup> An agent to whom a particular area or clientele has been allocated exclusively is entitled to the agreed commission or, in the absence of such an agreement, the customary commission on all transactions concluded during the agency relationship with clients belonging to that area or clientele.

<sup>3</sup> Unless otherwise agreed in writing, the entitlement to the commission is established as soon as the transaction has been validly concluded with the client.

#### **Art. 418h**

b. Lapse of entitlement

<sup>1</sup> The agent's entitlement to commission lapses subsequently where the execution of a concluded transaction is prevented for reasons not attributable to the principal.

<sup>2</sup> By contrast, the agent is not entitled to any commission where no consideration is given in return for the principal's performance, or where the consideration is so limited that the principal cannot reasonably be expected to pay any commission.

#### **Art. 418i**

c. Due date

Unless otherwise provided by agreement or custom, the commission falls due at the end of the calendar half-year in which the transaction was concluded, whereas in insurance business the commission falls due when the first annual premium has been paid.

#### **Art. 418k**

d. Statement of commission

<sup>1</sup> Where the agent is not obliged by written agreement to draw up a statement of commission, the principal must provide him with a written statement as at each due date indicating the transactions on which commission is payable.

<sup>2</sup> On request, the agent must be granted access to the books of account or supporting documents that are relevant to such statement. The agent may not waive this right in advance.

#### **Art. 418l**

2. Collection commission

<sup>1</sup> Unless otherwise provided by agreement or custom, the agent is entitled to a collection commission on any amounts he collects and delivers to the principal in accordance with the latter's instructions.

<sup>2</sup> At the end of the agency relationship the agent loses his authority to collect payments and his entitlement to further collection commission.

#### **Art. 418m**

III. Inability to work

<sup>1</sup> The principal is obliged to pay the agent appropriate compensation if, in breach of his legal or contractual obligations, he is at fault in preventing the agent from earning the volume of commission that was agreed or to be expected in the circumstances. Any agreement to the contrary is void.

<sup>2</sup> Where an agent who is permitted to represent only one principal at a time is prevented from working through no fault of his own by illness, Swiss compulsory military service or similar reasons, he is entitled for a relatively short period to adequate compensation for loss of income, provided the commercial agency contract has lasted for at least one year. The agent may not waive this right in advance.

**Art. 418n**

IV. Costs and expenses

<sup>1</sup> Unless otherwise provided by agreement or custom, the agent is not entitled to reimbursement of costs and expenses incurred in the normal performance of his duties, but is entitled to reimbursement of those incurred as a result of special instructions issued by the principal or in the capacity of agent without authority for the principal, such as freight charges and customs duties.

<sup>2</sup> The duty to reimburse costs and expenses obtains even where the transaction fails to materialise.

**Art. 418o**

V. Special lien

<sup>1</sup> By way of securing claims due to him under the commercial agency relationship and, in the event that the principal becomes insolvent, claims that are not yet due, the agent has a special lien on chattels and securities that he holds pursuant to the contract and on any payments received from clients by virtue of an authority to collect with which he has been vested, and this right of lien may not be waived in advance.

<sup>2</sup> The lien does not extend to price lists and client lists.

**Art. 418p**

E. Termination  
I. Expiry of duration

<sup>1</sup> Where the commercial agency contract was concluded for a fixed term or its duration is limited by virtue of its purpose, it ends without notice on expiry of that term.

<sup>2</sup> Where a fixed-term commercial agency contract is tacitly extended by both parties on expiry of its duration, it is deemed to have been renewed for the same duration subject to a maximum of one year.

<sup>3</sup> Where termination is subject to prior notice, failure by both parties to give notice is deemed tacit renewal of the contract.

**Art. 418q**

II. Notice of termination  
1. In general

<sup>1</sup> Where the commercial agency contract was not concluded for a fixed term and its duration is not limited by virtue of its purpose, it may be terminated by either party during the first year of the contract by giving one month's notice expiring at the end of the following calendar month. Any agreement of a shorter notice period must be done in writing.

<sup>2</sup> Where the contract has lasted for at least one year, it may be terminated by giving two months' notice expiring at the end of a calendar quarter. However, the parties may agree a longer notice period or a different termination date.

<sup>3</sup> The notice period must be the same for both the principal and the agent.

#### **Art. 418r**

2. For good cause

<sup>1</sup> The principal and the agent may at any time terminate the contract with immediate effect for good cause.

<sup>2</sup> The provisions governing service contracts are applicable *mutatis mutandis*.

#### **Art. 418s**

III. Death, incapacity, bankruptcy

<sup>1</sup> The agency relationship ends on the death or incapacity of the agent or the bankruptcy of the principal.

<sup>2</sup> Where in essence the agency relationship was entered into with the principal in person, it ends on his death.

#### **Art. 418t**

IV. Claims of the agent  
1. Commission

<sup>1</sup> Unless otherwise provided by agreement or custom, the agent is entitled to commission on orders subsequently placed by a client acquired by him during the agency relationship only if such orders are placed before the end of the commercial agency contract.

<sup>2</sup> On termination of the agency relationship, all the agent's claims for commission or reimbursement of expenses fall due.

<sup>3</sup> A later due date may be agreed in writing for commission on transactions to be performed in full or in part after the agency relationship has ended.

#### **Art. 418u**

2. Compensation for clientele

<sup>1</sup> Where the agent's activities have resulted in a substantial expansion of the principal's clientele and considerable benefits accrue even after the end of the agency relationship to the principal or his legal successor from his business relations with clients acquired by the agent, the agent or his heirs have an inalienable claim for adequate compensation, provided this is not inequitable.

<sup>2</sup> The amount of such claim must not exceed the agent's net annual earnings from the agency relationship calculated as the average for the last five years or, where shorter, the average over the entire duration of the contract.

<sup>3</sup> No claim exists where the agency relationship has been dissolved for a reason attributable to the agent.

#### **Art. 418v**

V. Duty of restitution

By the time the agency relationship ends, each contracting party must return to the other everything received from him or from third parties for his account during the relationship. The contracting parties' rights of lien are unaffected.

### **Title Fourteen: Agency without Authority**

#### **Art. 419**

A. Rights and obligations of the agent  
I. Manner of execution

Any person who conducts the business of another without authorisation is obliged to do so in accordance with his best interests and presumed intention.

#### **Art. 420**

II. Liability of the agent in general

<sup>1</sup> The agent is liable for negligence.

<sup>2</sup> However, where the agent acted in order to avert imminent damage to the principal, his liability is judged more leniently.

<sup>3</sup> Where agency activities are carried out against the express or otherwise recognisable will of the principal and the prohibition was neither immoral nor illegal, the agent is also liable for chance occurrences unless he can prove that they would have occurred even without his involvement.

#### **Art. 421**

III. Liability of agents lacking capacity to enter into contracts

<sup>1</sup> Where the agent lacked the capacity to enter into contractual commitments, he is liable for his agency activities only to the extent that he is enriched or alienated the enrichment in bad faith.

<sup>2</sup> Further liability in tort is reserved.

#### **Art. 422**

B. Position of the principal  
I. Agency in the principal's best interests

<sup>1</sup> Where agency activities were in the best interests of the principal, he is obliged to reimburse the agent for all expenses that were necessary or useful and appropriate in the circumstances plus interest, to release him to the same extent from all obligations assumed and to compensate him at the court's discretion for any other damage incurred.

<sup>2</sup> Provided the agent acted with all due care, the claim accrues to him even if the intended outcome was not achieved.

<sup>3</sup> Where the agent's expenses are not reimbursed, he has the right of repossession in accordance with the provisions governing unjust enrichment.

#### Art. 423

II. Business conducted in the agent's interests

<sup>1</sup> Where agency activities were not carried out with the best interests of the principal in mind, he is nonetheless entitled to appropriate any resulting benefits.

<sup>2</sup> The principal is obliged to compensate the agent and release him from obligations assumed only to the extent the principal is enriched.

#### Art. 424

III. Approval of agency activities

Where the agent's actions are subsequently approved by the principal, the provisions governing agency become applicable.

### Title Fifteen: The Commission Contract

#### Art. 425

A. Buying and selling commission  
I. Definition

<sup>1</sup> A buying or selling commission agent is a person who, in return for a commission, buys or sells chattels or securities in his own name but for the account of another (the principal).

<sup>2</sup> The provisions governing agency apply to the commission agency relationship, unless otherwise provided in this Title.

#### Art. 426

II. Obligations of the commission agent  
1. Duty of notification, insurance

<sup>1</sup> The commission agent must keep the principal informed and in particular must notify him immediately of the performance of the commission contract.

<sup>2</sup> He is obliged to insure the goods on commission only where so instructed by the principal.

#### Art. 427

2. Treatment of goods on commission

<sup>1</sup> Where the goods for sale on commission are evidently defective, the commission agent must safeguard the rights of recourse against the carrier, secure evidence of the defective condition of the goods, preserve the goods where possible and notify the principal immediately.

<sup>2</sup> If the commission agent omits to discharge these obligations, he is liable for any damage caused by such omission.

<sup>3</sup> Where there is a risk that the goods for sale on commission will rapidly deteriorate, the commission agent has the right and, should the

interests of the principal so require, the obligation to arrange their sale with the assistance of the competent authority of the place where the goods are located.

#### Art. 428

3. Pricing by the principal

1 Where the commission agent sells goods below the minimum price instructed, he is liable to the principal for the difference unless he can prove that such sale averted loss or damage that the principal would otherwise have incurred and that he was unable to seek the principal's instructions in the time available.

2 Furthermore, where the commission agent is at fault, he must compensate the principal for any other damage caused by the breach of contract.

3 Where the commission agent buys at a lower price or sells at a higher price than instructed by the principal, he is not permitted to retain the profit but must credit it to the principal.

#### Art. 429

4. Advances and loans to third parties

1 A commission agent who makes cash advances or extends credit to a third party without the consent of the principal does so at his own risk.

2 However, where sale on credit is the customary commercial practice at the place of sale, the commission agent is entitled to sell on credit unless the principal has instructed otherwise.

#### Art. 430

5. Del credere

1 Except where he extends credit without authority, the commission agent is liable for the debtor's payment or performance of other obligations only to the extent that he has expressly assumed such liability or if this is a customary commercial practice at his place of business.

2 A commission agent who assumes liability for performance by the debtor is entitled to special remuneration (del credere commission).

#### Art. 431

III. Rights of the commission agent

1. Reimbursement of advances and expenses

1 The commission agent is entitled to reimbursement of all advances, expenses and other costs incurred on the principal's behalf plus interest on all such amounts.

2 He may also claim remuneration for storage and transport costs, though not for the wages of his employees.

#### Art. 432

2. Commission  
a. Entitlement



<sup>1</sup> The commission agent is entitled to commission on execution of the transaction or failure to execute it for a reason attributable to the principal.

<sup>2</sup> In the case of transactions that could not be executed for other reasons, the commission agent is entitled to remuneration for his endeavours only to the extent provided for by local custom.

### Art. 433

b. Forfeiture and conversion into transaction for own account

<sup>1</sup> The commission agent forfeits his right to commission if he has acted improperly towards the principal and in particular if he has secured an inflated purchase price or a deflated sale price.

<sup>2</sup> Moreover, in both these cases the principal has the right to take action against the commission agent himself as buyer or seller.

### Art. 434

3. Special lien

The commission agent has a special lien in respect of the goods on commission and the sale proceeds.

### Art. 435

4. Sale of goods at auction

<sup>1</sup> Where the goods on commission remain unsold or the order to sell is withdrawn and the principal fails to take them back or otherwise dispose of them within a reasonable time, the commission agent may apply to the competent authority at the place where the goods are located to arrange to have them sold at auction.

<sup>2</sup> The auction may be ordered without first hearing the principal if neither he nor a representative is present at that location.

<sup>3</sup> However, official notice must be served on the principal before the auction is held, unless the goods in question are susceptible to rapid deterioration.

### Art. 436

5. Agent acting for his own account

a. Pricing and commission

<sup>1</sup> Unless otherwise instructed by the principal, a commission agent instructed to buy or sell goods, bills of exchange or other securities with a quoted exchange or market price is entitled, in his own capacity as seller, to deliver the goods he is instructed to buy or, in his own capacity as buyer, to purchase the goods he is instructed to sell.

<sup>2</sup> In both cases, the commission agent must account for the exchange or market price that applied at the time the instruction was executed and is entitled to both the usual commission and reimbursement of the expenses normally incurred in commission business.

<sup>3</sup> In other respects the transaction is treated as a contract of sale.

**Art. 437**

b. Presumption of trading for own account

Where the commission agent is permitted to act for his own account and he notifies the principal that the instruction has been executed without naming another person as buyer or seller, the presumption is that he himself has assumed the obligations of the buyer or seller.

**Art. 438**

c. Lapse of right to trade for own account

The commission agent is not permitted to act as buyer or seller if the principal has withdrawn his instruction and the notice of withdrawal reached the commission agent before he dispatched the notice of execution.

**Art. 439**

B. Forwarding contract

A forwarding agent or carrier who in return for payment undertakes to carry or forward goods for the consignor's account but in his own name is regarded as a commission agent but is subject to the provisions governing contracts of carriage in relation to the forwarding of the goods.

**Title Sixteen: The Contract of Carriage****Art. 440**

A. Definition

<sup>1</sup> A carrier is a person who undertakes to transport goods in return for payment (freight charge).

<sup>2</sup> The provisions governing agency apply to contracts of carriage unless otherwise provided in this Title.

**Art. 441**

B. Effects  
I. Obligations of the carrier  
1. Required information

<sup>1</sup> The consignor must give the carrier precise details of the address of the consignee and the place of delivery, the number, type of packaging, weight and content of packages, the delivery date and the transport route, as well as the value of any valuable objects.

<sup>2</sup> The consignor is liable for any detriment arising from missing or inaccurate details.

**Art. 442**

2. Packaging

<sup>1</sup> The consignor ensures that the goods are properly packaged.

<sup>2</sup> He is liable for the consequences of defects in packaging that are not externally apparent.

<sup>3</sup> By contrast, the carrier is liable for the consequences of defects that were externally apparent if he accepted the goods without reservation.

### Art. 443

3. Power of disposal over freight

<sup>1</sup> While the goods are in the carrier's possession, the consignor has the right to reclaim them against compensation for the carrier for expenses incurred and any detriment resulting from their repossession, except where:

1. a bill of lading has been issued by the consignor and delivered to the consignee by the carrier;
2. the consignor has arranged for an acknowledgement of receipt to be issued by the carrier and cannot return it;
3. the carrier has sent the consignee written notice that the goods have arrived and are ready for collection;
4. the consignee has requested delivery of the goods after they have arrived at destination.

<sup>2</sup> In these cases the carrier is obliged to comply solely with the consignee's instructions, although where the consignor has arranged for an acknowledgement of receipt to be issued by the carrier and the goods have not yet arrived at destination, the carrier is bound by such instructions only if the acknowledgement of receipt has been delivered to the consignee.

### Art. 444

II. Position of the carrier  
1. Treatment of freight  
a. Delivery not possible

<sup>1</sup> Where the goods are rejected, the associated claims remain unpaid or the consignee cannot be contacted, the carrier must inform the consignor and in the interim place the goods in storage or deposit them with a third party at the risk and expense of the consignor.

<sup>2</sup> If neither consignor nor consignee disposes of the goods within a reasonable period, in the same manner as a commission agent the carrier may apply to the competent authority at the place where the goods are located to arrange to have them sold in favour of the rightful beneficiary.

### Art. 445

b. Sale

<sup>1</sup> Where the goods are likely to deteriorate rapidly or their probable value does not cover the associated costs, the carrier must without delay arrange for official confirmation of that fact and may arrange for the sale of the goods in the same manner as when delivery is not possible.

<sup>2</sup> Where possible, the interested parties must be informed that such sale has been ordered.

- Art. 446**
- c. Liability      When exercising the rights conferred on him with regard to the handling of the goods, the carrier must safeguard the interests of their owner to the best of his ability and is liable in damages for any fault on his part.
- Art. 447**
2. Liability of the carrier
- a. Loss or destruction of the goods
- <sup>1</sup> If the goods are lost or destroyed, the carrier must compensate their full value unless he can prove that the loss or destruction resulted from the nature of the goods or through the fault of the consignor or the consignee or occurred as a result of instructions given by either or of circumstances which could not have been prevented even by the diligence of a prudent carrier.
- <sup>2</sup> The consignor is deemed to be at fault if he fails to inform the carrier of any especially valuable freight goods.
- <sup>3</sup> Agreements stipulating an interest in excess of the full value of the goods or an amount of compensation lower than their full value are reserved.
- Art. 448**
- b. Delay, damage, partial destruction
- <sup>1</sup> Subject to the same conditions and reservations as apply to the loss or destruction of goods, the carrier is liable for any damage resulting from late delivery, damage in transit or the partial destruction of the goods.
- <sup>2</sup> Unless specifically agreed otherwise, the damages claimed may not exceed those for total loss.
- Art. 449**
- c. Liability for sub-contractors
- The carrier is liable for all accidents and errors occurring during the carriage of goods, regardless of whether he transports them to the final destination or sub-contracts the task to another carrier, subject to right of recourse against the sub-contractor to whom goods are entrusted.
- Art. 450**
3. Duty of notification
- The carrier must notify the consignee immediately on arrival of the goods.
- Art. 451**
4. Lien

1 Where the consignee disputes claims attaching to the goods, he may demand delivery only if the disputed amount is deposited with the court.

2 The deposited amount replaces the goods with regard to the carrier's lien.

#### **Art. 452**

5. Forfeiture of liability claims

1 Unconditional acceptance of the goods and payment of the freight charge extinguish all claims against the carrier, except in cases of deliberate deceit or gross negligence.

2 Furthermore, the carrier remains liable for damage that is not externally apparent where such damage is discovered within the time in which, in the circumstances, the consignee was able or might reasonably be expected to inspect the goods, provided he notifies the carrier immediately on discovering such damage.

3 However, such notification must be given no later than eight days after delivery.

#### **Art. 453**

6. Procedure

1 In any dispute, the competent authority at the place where the goods are located may, at the request of either party, order that the goods be deposited with a third party or, where necessary, sold after their condition has been established.

2 The sale may be forestalled by satisfying all claims allegedly attaching to the goods or by depositing the amount of such claims with the court.

#### **Art. 454**

7. Time limits on actions for damages

1 Actions for damages against the carrier become time-barred one year after the scheduled delivery date in the case of destruction, loss or delay and one year after the date on which the goods were delivered to the consignee in the case of damage.

2 The consignee and the consignor may always assert their claims against the carrier by way of defence, provided that objections are lodged within one year and that the claim is not extinguished by acceptance of the goods.

3 The above does not apply to cases of malice or gross negligence on the part of the carrier.

#### **Art. 455**

C. State-owned and licensed carriers

1 Carriers operating under state licence are not empowered to exclude or restrict in advance the application of the provisions governing the

carrier's liability to their own benefit by means of special agreement or regulations governing their operations.

<sup>2</sup> However, the parties may derogate contractually from said provisions to the extent permitted by this Title.

<sup>3</sup> The special provisions governing contracts for the carriage of goods by providers of postal services, the railways and steamers are unaffected.<sup>228</sup>

#### Art. 456

D. Use of state transport facilities

<sup>1</sup> Any carrier or forwarding agent who uses a state transport facility to perform carriage obligations he has assumed or who assists in the carriage of goods by such a facility is subject to the special provisions governing freight transport that apply to that facility.

<sup>2</sup> However, any agreement to the contrary between the carrier or forwarding agent and the principal is unaffected.

<sup>3</sup> This article does not apply to road hauliers.

#### Art. 457

E. Liability of the forwarding agent

A forwarding agent who uses a state transport facility in order to perform obligations under a contract of carriage may not deny liability on grounds of insufficient right of recourse where right of recourse was forfeited through his own fault.

### Title Seventeen: Registered Power of Attorney and other Forms of Commercial Agency

#### Art. 458

A. Registered power of attorney  
I. Definition and conferral

<sup>1</sup> A registered attorney is a person who has been expressly or tacitly granted the authority to conduct operations and to sign per procuracion on behalf of a trading, manufacturing or other commercial business by its owner.

<sup>2</sup> The owner of the business must give notice of the granting of the power of attorney for entry in the commercial register but is bound by the actions of the registered attorney even before it is entered.

<sup>3</sup> The granting of authority to conduct other kinds of business or transactions also requires entry of the attorney in the commercial register.

<sup>228</sup> Amended by Annex No II 2 of the Postal Services Act of 17 Dec 2010, in force since 1 Oct. 2012 (AS 2012 4993; BBl 2009 5181).

- Art. 459**
- II. Scope of authority
- <sup>1</sup> In dealings with bona fide third parties, the registered attorney is deemed authorised to commit the owner of the business by signing bills of exchange and to carry out on his behalf all types of transaction that fall within the scope of the commercial operations and business affairs of the owner.
- <sup>2</sup> The registered attorney is not authorised to alienate or encumber immovable property unless expressly vested with such powers.
- Art. 460**
- III. Restrictions
- <sup>1</sup> The registered power of attorney may be limited to the business affairs of a specific branch.
- <sup>2</sup> It may be conferred on two or more persons collectively (joint power of attorney) such that the signature of one attorney is not binding on the principal unless others participate in the transaction as prescribed.
- <sup>3</sup> Other limitations of authority have no legal effect on bona fide third parties.
- Art. 461**
- IV. Withdrawal
- <sup>1</sup> Any withdrawal of the power of attorney must be entered in the commercial register, even where no entry was made of its conferral.
- <sup>2</sup> As long as such withdrawal has not been registered and published, the registered power of attorney remains in force as against bona fide third parties.
- Art. 462**
- B. Other forms of commercial agency
- <sup>1</sup> Where the owner of a trading, manufacturing or other commercial establishment appoints a person to represent him in managing the affairs of the business as a whole or in carrying out certain transactions on behalf of the business without granting that person a registered power of attorney, the agency authority of the representative extends to all activities that fall within the normal scope of the commercial operations of the business or are normally connected with the transactions in question.
- <sup>2</sup> However, a commercial agent is not authorised to sign bills of exchange, take out loans or conduct litigation unless expressly granted such powers.

**Art. 463**<sup>229</sup>

C. ...

**Art. 464**

D. Prohibition of competition

1 A registered attorney or commercial agent appointed to manage the affairs of the business as a whole or employed by the owner of the business may not without the owner's consent engage in transactions for his own account or that of a third party in the economic sectors in which the owner himself is active.<sup>230</sup>

2 In the event of any violation of this provision, the owner of the business may seek compensation for the resultant loss or damage and appropriate the relevant transactions for his own account.

**Art. 465**

E. Extinction of power of attorney and other forms of commercial agency

1 The registered power of attorney and authority to act as commercial agent may be revoked at any time without prejudice to rights accruing to the parties concerned under any existing individual contract of employment, partnership agreement, agency agreement or the like.<sup>231</sup>

2 The death or incapacity of the owner of the business does not extinguish the registered power of attorney or authority to act as commercial agent.

**Title Eighteen: The Payment Instruction****Art. 466**

A. Definition

By means of a payment instruction, the recipient of the instruction (agent) is authorised to transfer money, securities or other fungibles for the account of the party issuing the instruction (principal) to the payee and the payee is authorised to receive them in his own name.

**Art. 467**B. Effects  
I. Relations between principal and payee

1 Where the purpose of the payment instruction is to redeem a debt owed by the principal to the payee, the debt is redeemed only once the agent has made the transfer.

<sup>229</sup> Repealed by No II Art. 6 No 1 of the FA of 25 June 1971, with effect from 1 Jan 1972 (AS 1971 1465; BBl 1967 II 241). See also the Final and Transitional Provisions of Title X, at the end of this Code.

<sup>230</sup> Amended by No II Art. 1 No 10 of the FA of 25 June 1971, in force since 1 Jan 1972 (AS 1971 1465; BBl 1967 II 241). See also the Final and Transitional Provisions of Title X, at the end of this Code.

<sup>231</sup> Amended by No II Art. 1 No 11 of the FA of 25 June 1971, in force since 1 Jan 1972 (AS 1971 1465; BBl 1967 II 241). See also the Final and Transitional Provisions of Title X, at the end of this Code.



<sup>2</sup> However, where the payee has accepted a payment instruction, he may assert his claim against the principal only if he called for payment from the agent but did not receive it before expiry of the term stipulated in the payment instruction.

<sup>3</sup> A creditor who does not wish to accept a payment instruction received from his debtor must notify the debtor immediately in order to avoid liability in damages.

### Art. 468

II. Obligations of the agent

<sup>1</sup> An agent who notifies the payee that he accepts the payment instruction unreservedly is obliged to pay the payee and may raise against him only such objections as arise from their personal relationship or from the terms of the payment instruction, not objections arising from his relationship with the principal.

<sup>2</sup> An agent who is indebted to the principal is obliged to comply with the payment instruction, provided that in doing so his own position is in no way prejudiced.

<sup>3</sup> Even in this case the agent is not obliged to declare his acceptance prior to payment, unless otherwise agreed with the principal.

### Art. 469

III. Duty to notify non-payment

Where the agent refuses to make the payment called for by the payee or declares in advance that he will not make it, the payee must notify the principal immediately in order to avoid liability in damages.

### Art. 470

C. Revocation

<sup>1</sup> The principal may revoke the payment instruction as against the payee unless he issued it in order to redeem a debt to the payee or otherwise in favour of the latter.

<sup>2</sup> He may revoke it as against the agent provided the agent has not notified the payee of his acceptance.

<sup>2bis</sup> Unless the regulations of a payment system provide otherwise, a payment instruction in a cashless transaction becomes irrevocable as soon as the transfer amount is debited from the principal's account.<sup>232</sup>

<sup>3</sup> In the event of bankruptcy proceedings against the principal, payment instructions that have not yet been accepted are deemed revoked.

<sup>232</sup> Inserted by Annex No 3 of the Uncertificated Securities Act of 3 Oct. 2008, in force since 1 Oct. 2009 (AS 2009 3577; BBl 2006 9315).

D. Payment instructions relating to securities

### Art. 471

<sup>1</sup> The provisions of this Title apply to payment instructions made out to the bearers of negotiable securities on the premise that each such bearer is considered to be the payee in relation to the agent, whereas the rights as between the principal and the payee are established only in respect of each transferor and transferee.

<sup>2</sup> The special provisions governing cheques and payment instructions similar in nature to bills of exchange are unaffected.

## Title Nineteen: The Contract of Bailment

### Art. 472

A. Bailment in general  
I. Definition

<sup>1</sup> A contract of bailment is a contract in which the bailee undertakes to take receipt of a chattel entrusted to him by the bailor and to keep it in a safe place.

<sup>2</sup> The bailee may claim remuneration only where this has been expressly stipulated or was to be expected in the circumstances.

### Art. 473

II. Obligations of the bailor

<sup>1</sup> The bailor must reimburse the bailee for expenses incurred in performance of the contract.

<sup>2</sup> He is liable to the bailee for loss or damage caused by the bailment unless he can prove that such loss or damage occurred through no fault of his own.

### Art. 474

III. Obligations of the bailee  
1. Prohibition of use

<sup>1</sup> The bailee may not use the deposited chattel without the bailor's consent.

<sup>2</sup> If he does, he must pay the bailor adequate compensation and is liable for any chance occurrence unless he can prove that such occurrence would have affected the chattel in any event.

### Art. 475

2. Return  
a. Rights of the bailor

<sup>1</sup> The bailor may reclaim the bailed chattel together with any growth or accrual thereto at any time, even where a fixed term was agreed for the bailment.

<sup>2</sup> However, the bailor must reimburse the bailee for expenses incurred with a view to bailment over the agreed term.

- Art. 476**
- b. Rights of the bailee
- 1 The bailee may return the bailed chattel before expiry of the stipulated term only where unforeseen circumstances render the bailee unable to keep the chattel safely or without detriment to himself.
- 2 Where no term was agreed for the bailment, the bailee may return the chattel at any time.
- Art. 477**
- c. Place of return
- The bailed chattel is returned at the risk and expense of the bailor at the same place where it was to be kept.
- Art. 478**
3. Liability of joint bailees
- Where several bailees have jointly received a chattel in bailment, they are jointly and severally liable.
- Art. 479**
4. Third-party rights of title
- 1 If a third party claims title to the bailed chattel, the bailee remains obliged to return it to the bailor unless it has been attached by court order or the third party has brought action to establish title against the bailor.
- 2 In this event, the bailee must inform the bailor immediately.
- Art. 480**
- IV. Official receiver
- Where two or more persons, with a view to protecting their rights, deposit an object whose legal status is disputed or uncertain in bailment with a third party (official receiver), the latter may return it only with the consent of the interested parties or as directed by the court.
- Art. 481**
- B. Bailment of fungibles
- 1 Where money is deposited with the express or tacit agreement that the bailee is not obliged to return precisely the same notes and coin but merely the same sum of money, all attendant risks and benefits pass to the bailee.
- 2 A tacit agreement is presumed if the sum of money was unsealed and open when deposited.
- 3 Where other fungibles or securities are deposited in bailment, the bailee has power to dispose of them only if expressly authorised so to do by the bailor.

**Art. 482**

C. Warehousing business  
I. Right to issue documents of title to goods

<sup>1</sup> A warehouse keeper who publicly offers warehousing services may apply to the competent authority for the right to issue documents of title to the goods kept in storage.

<sup>2</sup> These documents of title to goods are securities that confer the right to take delivery of the goods stored.

<sup>3</sup> They may be made out to a named person, to order or to bearer.

**Art. 483**

II. Warehouse keeper's duty of safe-keeping

<sup>1</sup> A warehouse keeper has the same duty of care in relation to stored goods as a commission agent.

<sup>2</sup> Where feasible, he must inform the bailor of any changes in the condition of the goods that call for further measures.

<sup>3</sup> He must allow the bailor to inspect the goods and to take test samples during business hours and to take measures necessary to preserve the goods at any time.

**Art. 484**

III. Intermingling of stored goods

<sup>1</sup> A warehouse keeper may mix fungibles with other items of the same kind and quality only if expressly authorised so to do.

<sup>2</sup> Each bailor may reclaim a number corresponding to his deposit from any goods thus intermingled.

<sup>3</sup> The warehouse keeper may make the required division without the involvement of the other bailors.

**Art. 485**

IV. Rights of the warehouse keeper

<sup>1</sup> The warehouse keeper is entitled to the agreed or customary warehouse fee and to reimbursement of all expenses not resulting from the actual storage of the goods (freight charges, customs duties, repairs).

<sup>2</sup> Such expenses must be reimbursed immediately, whereas the warehouse fee is payable in arrears for every three months of storage and in any event whenever all or some of the goods are reclaimed.

<sup>3</sup> The warehouse keeper's claims are secured by a lien on the goods, provided he remains in possession of the goods or may dispose of them by means of a document of title to goods.

**Art. 486**

V. Return of the goods

<sup>1</sup> The warehouse keeper has the same obligation to return the goods as an ordinary bailee, except that he remains bound to observe the contractual storage duration even where an ordinary bailee would be entitled to return them sooner owing to unforeseen circumstances.

2 Where a document of title to goods has been issued, the warehouse keeper is entitled and obliged to release the goods only to the beneficiary named therein.

#### **Art. 487**

D. Inns, hotels and stables  
I. Liability of hoteliers  
1. Conditions and scope

1 Innkeepers and hoteliers who provide accommodation for persons not known to them are liable for any damage, destruction or misappropriation of personal effects brought onto the premises by their guests unless they can prove that such loss or damage is attributable to the guest himself or to his visitors, companions or staff or to force majeure or to the nature of the objects in question.

2 However, the liability for personal effects brought onto the premises by guests is subject to an upper limit of 1,000 francs for each guest where no fault can be ascribed to the innkeeper or hotelier or his staff.

#### **Art. 488**

2. Specific liability for valuables

1 Where valuables, large sums of money or securities are not deposited with the innkeeper or hotelier, the latter is only liable for them if he or his staff are at fault.

2 Where he accepts or declines the deposit of such items, he is liable for their full value.

3 Where the guest cannot reasonably be expected to deposit such items, the innkeeper or hotelier is liable for them as for the other personal effects of the guest.

#### **Art. 489**

3. End of liability

1 The guest's claims are forfeited if he fails to report any loss or damage to the innkeeper or hotelier immediately.

2 The innkeeper or hotelier may not exempt himself from liability by posting disclaimer notices on the premises or making such liability dependent on conditions not specified in law.

#### **Art. 490**

II. Liability of stable owners

1 Owners of stables are liable for any damage, destruction or misappropriation of animals, vehicles and their appurtenances entrusted to or otherwise received by them or by their staff unless they can prove that such loss or damage is attributable to the bailor or his visitors, companions or staff or to force majeure or to the nature of the animals or objects deposited.

2 However, liability for animals, vehicles and appurtenances accommodated in stables is subject to a maximum of 1,000 francs for each bailor where no fault can be ascribed to the stable owner or his staff.

**Art. 491**

## III. Lien

<sup>1</sup> Innkeepers, hoteliers and stable owners have a lien on the animals and objects brought onto their premises as security for their claims in connection with accommodation and storage.

<sup>2</sup> The provisions governing the landlord's or lessor's right of lien apply *mutatis mutandis*.

**Title Twenty:<sup>233</sup> The Contract of Surety****Art. 492**A. Requirements  
I. Definition

<sup>1</sup> Under a contract of surety, the surety undertakes as against the creditor of the principal debtor to vouch for performance of the obligation.

<sup>2</sup> A contract of surety presupposes the existence of a valid primary obligation. A future or conditional obligation may be guaranteed by means of a contract of surety provided that the primary obligation takes effect.

<sup>3</sup> A person standing surety for performance of an obligation resulting from a contract that is not binding on the principal debtor as a result of error or incapacity to make a contract is liable for such obligation, subject to the conditions and doctrines of the law governing surety, if he was aware of the defect vitiating the contract at the time he gave his commitment. The same applies to any person who stands surety for performance of an obligation that is time-barred for the principal debtor.

<sup>4</sup> Unless the law provides otherwise, the surety may not waive in advance the rights conferred on him under this Title.

**Art. 493**

## II. Form

<sup>1</sup> The contract of surety is valid only where the surety makes a written declaration and indicates in the surety bond the maximum amount for which he is liable.

<sup>2</sup> Where the surety is a natural person, his declaration must additionally be done in the form of a public deed in conformity with the rules in force at the place where the instrument is drawn up. Where the liability under surety does not exceed the sum of 2,000 francs, it is sufficient for the surety to indicate the amount for which he is liable and the existence of joint and several liability, if any, in his own hand in the surety bond itself.

<sup>233</sup> Amended by No 1 of the FA of 10 Dec 1941, in force since 1 July 1942 (AS 58 279 644; BBl 1939 II 841). See also the Transitional provisions for this Title at the end of this Code.

<sup>3</sup> Contracts of surety in favour of the Confederation or its public institutions or in favour of a canton for the performance of public law obligations, such as customs duties, taxes and the like, and for freight charges merely require the written declaration of the surety and an indication in the surety bond itself of the amount for which he is liable.

<sup>4</sup> Where the total liability is divided into smaller amounts in order to circumvent the formal requirement of a public deed, the formal requirements for contracts of surety for such partial amounts are the same as those prescribed for the total.

<sup>5</sup> The sole formal requirement for subsequent amendments to the surety, except where the total liability is increased or the surety is transformed from a simple surety into a joint and several surety, is that they be done in writing. Where the principal obligation is assumed by a third party such that the debtor is released, the contract of surety is extinguished unless the surety has consented in writing to such assumption.

<sup>6</sup> The formal requirements applicable to the contract of surety also apply to the conferral of special authority to enter into a contract of surety and the promise to stand surety for the contracting party or a third party. The parties may agree in writing to limit the surety's liability to that portion of the principal obligation that is satisfied first.

<sup>7</sup> The Federal Council may cap the fee payable for drawing up the surety bond as a public deed.

#### **Art. 494**

##### III. Spouse's consent

<sup>1</sup> A married person may validly stand as surety only with the written consent of his spouse given in advance or at the latest simultaneously, unless the spouses are separated by court judgment.

<sup>2</sup> ... <sup>234</sup>

<sup>3</sup> The spouse's consent to subsequent amendments of a contract of surety is required only where the total liability is to be increased or a simple surety is to be transformed into a joint and several surety, or where the effect of the amendment is to diminish the level of security substantially.

<sup>4</sup> The same applies *mutatis mutandis* to registered partners.<sup>235</sup>

<sup>234</sup> Repealed by No I of the FA of 17 June 2005 (Sureties. Spouse's consent), with effect from 1 Dec 2005 (AS 2005 5097; BBl 2004 4955 4965).

<sup>235</sup> Amended by Annex No 11 to the Same-Sex Partnership Act of 18 June 2004, in force since 1 Jan 2007 (AS 2005 5685; BBl 2003 1288).

- B. Substance
  - I. Particularities of different types of surety
    - 1. Simple surety

### Art. 495

<sup>1</sup> The creditor may resort to a simple surety only if, after the surety was provided, the debtor is declared bankrupt or obtains a debt restructuring moratorium, or is the object of debt enforcement proceedings instigated with due diligence by the creditor which have resulted in the issue of a definitive certificate of loss, or has relocated his domicile abroad and can no longer be sued in Switzerland, or legal action against him in foreign courts has been substantially impeded as a result of such relocation.

<sup>2</sup> Where the claim is secured by pledges, a simple surety may require that the creditor satisfy his claim first from such pledges, provided the debtor has not been declared bankrupt or obtained a debt restructuring moratorium.

<sup>3</sup> Where the surety has undertaken solely to cover any shortfall suffered by the creditor (indemnity bond), he may not be sued unless a definitive certificate of loss has been issued against the principal debtor or the latter has relocated his domicile abroad and can no longer be sued in Switzerland, or legal action against him in foreign courts has been substantially impeded as a result of such relocation. Where a composition agreement has been concluded, the surety may be sued for the remitted portion of the principal obligation immediately on the entry into force of the composition agreement.

<sup>4</sup> Agreements to the contrary are reserved.

### Art. 496

- 2. Joint and several surety

<sup>1</sup> Where a person stands surety for an obligation by appending the words “joint and several” or an equivalent phrase, the creditor may resort to him before suing the principal debtor and before realising property given in pledge provided the principal debtor has defaulted on his debt payments and has been issued with payment reminders to no avail or is manifestly insolvent.

<sup>2</sup> The creditor may resort to the surety before realising pledged chattels and claims only to the extent that these are deemed by the court unlikely to cover the debt or where such sequence was agreed or where the debtor has been declared bankrupt or obtained a debt restructuring moratorium.

### Art. 497

- 3. Co-surety

<sup>1</sup> Where two or more persons stand surety for a single divisible principal obligation, each of them is liable as simple surety for his share and as collateral surety for the shares of the others.

<sup>2</sup> Where they have assumed joint and several liability by agreement with the principal debtor or among themselves, each of them is liable



for the whole obligation. However, a co-surety may refuse to pay more than his share where debt enforcement proceedings have not been commenced against all other jointly and severally liable co-sureties who entered into the contract of surety before him or at the same time and who may be sued for the obligation in Switzerland. He has the same right if his co-sureties have paid their share or furnished real security. Unless otherwise agreed, a co-surety who has paid his share has a right of recourse against other jointly and severally liable co-sureties to the extent that each of them has not yet paid his share. This right may be exercised before recourse against the principal debtor.

<sup>3</sup> Where it was apparent to the creditor that the surety entered into the contract on condition that others would stand surety with him for the same principal obligation, the surety is released if such condition is not fulfilled or if subsequently one of the co-sureties is released from his liability by the creditor or if his undertaking is declared invalid. In this last case the court may also, on grounds of equity, simply adjudicate that the surety's liability be reduced by an appropriate amount.

<sup>4</sup> Where several persons have independently agreed to stand surety for the same principal obligation, each of them is liable for the whole amount of his own commitment. However, unless otherwise agreed, a surety who pays such amount has a right of recourse against the others for their respective shares.

#### Art. 498

4. Collateral surety and counter-surety

<sup>1</sup> A collateral surety who stands surety to the creditor for performance of the obligation assumed by the primary surety is liable together with the latter in the same way as a simple surety is liable with the principal debtor.

<sup>2</sup> A counter-surety stands surety for the right of recourse against the debtor accruing to the primary surety who honours his commitment.

#### Art. 499

II. Common provisions  
1. Relationship between the surety and the creditor  
a. Scope of liability

<sup>1</sup> In all cases, the surety's liability is limited to the maximum amount indicated in the surety bond.

<sup>2</sup> Unless otherwise agreed, he is liable up to this limit for:

1. the amount of the principal obligation, including the legal consequences of any fault or default on the part of the principal debtor, but not for damage resulting from the extinction of the contract and any contractual penalty unless this was expressly agreed;
2. the costs of debt enforcement proceedings and legal action brought against the principal debtor, provided that the surety was given timely opportunity to avoid them by satisfying the

creditor, and, where applicable, for the costs of delivering pledges and transferring liens;

3. interest at the contractually agreed rate up to a maximum of the interest payable for the current year and the previous year or, where applicable, for the annual payments due for the current year and the previous year.

<sup>3</sup> Unless otherwise provided by the contract or dictated by the circumstances, the surety is liable only for the principal debtor's obligations arising after the contract of surety was concluded.

### Art. 500

b. Reduction of liability by court order

<sup>1</sup> Unless otherwise agreed at the outset or by subsequent amendment, the amount for which a surety who is a natural person is liable decreases every year by three per cent or, where the claim is secured by mortgage, by one per cent of the original maximum liability. In all cases where the surety is a natural person, the amount decreases in at least the same proportion as the obligation.

<sup>2</sup> This does not apply to contracts of surety in favour of the Confederation or its public institutions or in favour of a canton for the performance public law obligations such as customs duties, taxes and the like, and for freight charges, or to contracts of surety for the performance of official and civil service obligations or for obligations of variable amount, such as current accounts and contracts for delivery by instalments, and for periodic, recurrent obligations.

### Art. 501

c. Resort to the surety

<sup>1</sup> The creditor may not apply to the surety in respect of the principal obligation before the date fixed for its payment even if such date is brought forward following the principal debtor's bankruptcy.

<sup>2</sup> Under a contract of surety of any type, in exchange for furnishing real security, the surety may request that the court suspend the debt enforcement proceedings against him until all pledges have been realised and a definitive certificate of loss has been issued against the principal debtor or a composition agreement has been concluded with the creditors.

<sup>3</sup> Where the principal obligation may not fall due without notice being served by the creditor or the principal debtor, the time limit for the surety does not commence until the date on which he receives such notice.

<sup>4</sup> Where the obligation of a principal debtor residing abroad is annulled or restricted by foreign legislation, such as by provisions relating to clearing systems or a ban on currency transfers, a surety resident in

Switzerland may also rely on such legislation unless he has waived this defence.

### Art. 502

d. Defences

<sup>1</sup> The surety is entitled and obliged to plead against the creditor all defences open to the principal debtor or his heirs which are not based on the insolvency of the principal debtor. Suretyship for obligations that are not binding on the principal debtor owing to error or incapacity to make a contract or for time-barred obligations is reserved.

<sup>2</sup> Where the principal debtor waives a defence that is open to him, the surety may nevertheless plead it.

<sup>3</sup> Where the surety fails to plead defences open to the principal debtor, he forfeits his right of recourse to the extent that such defences would have released him from liability unless he can prove that he was unaware of them through no fault of his own.

<sup>4</sup> A person who stands surety for an obligation that is not actionable because it stems from gambling or betting may plead the same defences as are open to the principal debtor even if he was aware of that defect.

### Art. 503

e. Creditor's duty of diligence and duty to release documents and pledges

<sup>1</sup> Where the liens and other securities and preferential rights furnished when the contract of surety is concluded or subsequently obtained from the principal debtor for the specific purpose of securing the claim under surety are reduced by the creditor to the detriment of the surety, the latter's liability is decreased by an equal amount unless it can be proven that the damage is less. Claims for restitution of the over-paid amount are unaffected.

<sup>2</sup> Moreover, in the case of contracts of surety for the performance of official and civil service obligations, the creditor is liable to the surety if, as a result of his failure to supervise the employee as required or to act with the diligence that could reasonably be expected of him, the obligation arose or increased to an extent that it would not have otherwise reached.<sup>236</sup>

<sup>3</sup> On being satisfied by the surety, the creditor is required to furnish him with such documents and information as are required to exercise his rights. The creditor must also release to him the liens and other securities furnished when the contract of surety was concluded or subsequently obtained from the principal debtor for the specific purpose of securing the claim under surety or must take the requisite

<sup>236</sup> Amended by No II Art. 1 No 12 of the FA of 25 June 1971, in force since 1 Jan 1972 (AS 1971 1465; BBl 1967 II 241). See also the Final and Transitional Provisions of Title X, at the end of this Code.

measures to facilitate their transfer. This does not apply to liens and rights of pledge held by the creditor in relation to other claims where they take precedence over those of the surety.

<sup>4</sup> Where the creditor refuses without just cause to take such measures or has alienated the available evidence or the pledges and other securities for which he is responsible in bad faith or through gross negligence, the surety is released from his liability. He may demand the return of sums already paid and seek compensation for any further damage incurred.

#### Art. 504

f. Right to demand acceptance of payment

<sup>1</sup> As soon as the principal obligation falls due, even as a result of the bankruptcy of the principal debtor, the surety may at any time demand that the creditor accept satisfaction from him. Where several persons stand surety for an obligation, the creditor is obliged to accept even a part payment, provided it at least equals the share of the surety offering payment.

<sup>2</sup> Where the creditor refuses without just cause to accept payment, the surety is released from his liability. In this event the liability of all other jointly and severally liable co-sureties is decreased by the amount of his share.

<sup>3</sup> If the creditor is prepared to accept satisfaction, the surety may pay him even before the principal obligation falls due. However, the surety has no right of recourse against the principal debtor until the obligation falls due.

#### Art. 505

g. Creditor's duty to notify and to register his claim in bankruptcy and composition proceedings

<sup>1</sup> Where the debtor is six months in arrears in the payment of capital, interest accrued over half a year or an annual repayment, the creditor must notify the surety. The creditor must inform the surety of the status of the principal obligation on request.

<sup>2</sup> In the event of bankruptcy or composition proceedings concerning the principal debtor, the creditor must register his claim and do everything conscientious to safeguard his rights. He must inform the surety of the bankruptcy or debt restructuring moratorium as soon as he himself learns of it.

<sup>3</sup> Should the creditor fail to take any of these actions, he forfeits his claims against the surety to the extent of any damage to the latter resulting from such failure.

2. Relationship  
between surety  
and principal  
debtor  
a. Right to  
security and  
release

### Art. 506

The surety may require that the principal debtor furnish security and demand his release from liability once the principal obligation falls due:

1. where the principal debtor breaches the agreements made with the surety, and in particular his promise to release the surety by a certain date;
2. where the principal debtor is in default or has relocated his domicile abroad and legal action against him in foreign courts has been substantially impeded as a result;
3. where the surety faces substantially greater risks than when he agreed to offer the surety because of a deterioration in the principal debtor's financial situation, a decrease in the value of the security furnished or the fault of the principal debtor.

### Art. 507

b. Surety's right  
of recourse  
aa. In general

<sup>1</sup> The surety is subrogated to the creditor's rights to the extent that he has satisfied him. The surety may exercise these as soon as the obligation falls due.

<sup>2</sup> However, unless otherwise agreed, he is subrogated only to those liens and other securities which had been furnished when the contract of surety was concluded or were subsequently obtained from the principal debtor for the specific purpose of securing the claim. If on paying only part of the debt the surety is subrogated to only part of a lien, the part remaining with the creditor takes precedence over that of the surety.

<sup>3</sup> Special claims and defences arising from the legal relationship between the surety and the principal debtor are reserved.

<sup>4</sup> Where a pledge securing a claim under surety is realised or the owner of the pledge pays voluntarily, he may only have recourse against the surety for such payment where an agreement to this effect was reached between the pledgor and the surety or the pledge was given subsequently by a third party.

<sup>5</sup> The limitation period for the surety's right of recourse commences on satisfaction of the creditor by the surety.

<sup>6</sup> The surety has no right of recourse against the principal debtor for payment of any obligation that is not actionable or not binding on the principal debtor as a result of error or incapacity to make a contract. However, if he has assumed liability for a time-barred obligation at the behest of the principal debtor, the latter is liable to him pursuant to the provisions governing agency.

**Art. 508**

bb. Surety's duty to notify

<sup>1</sup> Where the surety pays the principal obligation in full or in part, he must notify the principal debtor.

<sup>2</sup> If he fails to do so and the principal debtor pays it again because he was not and could not be expected to be aware of the surety's payment, the surety forfeits his right of recourse against the principal debtor.

<sup>3</sup> This does not affect any claim against the creditor for unjust enrichment.

**Art. 509**

C. Termination of the contract of surety

I. By operation of law

<sup>1</sup> The surety is released as soon as the principal obligation is extinguished for whatever reason.

<sup>2</sup> Where the same person is both principal debtor and surety, the creditor retains the special advantages conferred by the contract of surety.

<sup>3</sup> Any surety given by a natural person is extinguished once twenty years have elapsed from the date on which the contract was entered into. This does not apply to contracts of surety in favour of the Confederation or its public institutions or in favour of a canton for the performance of public law obligations such as customs duties, taxes and the like, and for freight charges, or to contracts of surety for the performance of official and civil service obligations and for periodic, recurrent obligations.

<sup>4</sup> During the final year of this period, the creditor may resort to the surety even where a longer duration was agreed for the contract of surety, unless the surety has previously extended the contract or replaced it with a new one.

<sup>5</sup> The contract of surety may be extended by means of a written declaration by the surety for an additional period of no more than ten years. However, the written declaration is valid only if done no earlier than one year before the contract expires.

<sup>6</sup> Where the principal obligation becomes payable less than two years before the contract of surety expires and the creditor was unable to give notice to terminate it sooner, under a contract of surety of any type the creditor is entitled to resort to the surety without prior recourse to the principal debtor or the pledges. However, the surety has a right of recourse against the principal debtor even before the principal obligation becomes payable.

**Art. 510**

II. Fixed-term contract of surety; revocation

<sup>1</sup> A contract of surety for a future obligation may be revoked by the surety at any time by means of a written declaration to the creditor, provided that the obligation has not yet arisen, where the principal

debtor's financial situation has substantially deteriorated since the contract was concluded or where it subsequently transpires that his financial situation is substantially worse than the surety had in good faith assumed. Contracts of surety for the performance of official and civil service obligations may no longer be revoked once the official or civil service relationship has come into being.

<sup>2</sup> The surety is liable to compensate the creditor for any damage resulting from the fact that he relied in good faith on the contract of surety.

<sup>3</sup> Where a contract of surety is concluded for a fixed term, the surety's liability is extinguished if the creditor fails to assert his claim at law within four weeks of the expiry of such term and to pursue it without significant interruption.

<sup>4</sup> Where the obligation is not due at that juncture, the surety may exempt himself from liability only by furnishing real security.

<sup>5</sup> If he fails to do so, the contract of surety remains valid, subject to the provision governing the maximum duration of contracts of surety, as if the agreed duration had been until the obligation falls due.

### Art. 511

III. Open-ended contract of surety

<sup>1</sup> Where a contract of surety is concluded for an indefinite term, once the principal debtor's obligation falls due the surety may, where action may be brought only on such conditions, request that the creditor assert his claim within a period of four weeks, instigate proceedings to realise any existing pledges and pursue his claim without significant interruption.

<sup>2</sup> In the case of claims that fall due on expiry of a period of notice served by the creditor, once one year has elapsed since the contract of surety was concluded, the surety has the right to request that the creditor serve notice and, once the obligation is due, exercise his rights in accordance with para. 1.

<sup>3</sup> The surety is released if the creditor does not comply with such request.

### Art. 512

IV. Contracts of surety for official and civil service obligations

<sup>1</sup> A contract of surety for the performance of official obligations concluded for an indefinite term may be terminated subject to one year's notice expiring at the end of a term of office.

<sup>2</sup> Where there is no fixed term of office, the surety may terminate the contract by giving one year's notice expiring at the end of a four-year period commencing when the office was taken up.

<sup>3</sup> A person standing surety for the performance of civil service obligations for an indefinite term has the same right to give notice of termi-

nation as under an open-ended contract of surety for official obligations.

<sup>4</sup> Agreements to the contrary are unaffected.

## Title Twenty-One: Gambling and Betting

### Art. 513

A. No actionable claim

<sup>1</sup> Gambling and betting do not give rise to a claim.

<sup>2</sup> The same applies to advances or loans knowingly made for the purposes of gambling or betting and to contracts for difference and transactions for delivery of commodities or securities that are speculative in character.

### Art. 514

B. Debentures and voluntary payment

<sup>1</sup> A promissory note or bill of exchange signed by the gambler or bettor to cover the sum gambled or bet may not be enforced even following delivery of the instrument, subject to the rights that securities confer on bona fide third parties.

<sup>2</sup> A voluntary payment may be reclaimed only where the intended gambling or betting activity could not take place as a result of chance occurrence or the actions of the recipient, or where the latter has committed an impropriety.

### Art. 515

C. Lotteries and prize draws

<sup>1</sup> Lotteries and prize draws give rise to a claim only where they have been approved by the competent authority.

<sup>2</sup> In the absence of such approval, the claim is treated as a gambling claim.

<sup>3</sup> Lotteries or draws authorised abroad do not enjoy legal protection in Switzerland unless the competent Swiss authority has authorised the sale of tickets.

### Art. 515a<sup>237</sup>

D. Gambling in casinos, loans from casinos

Games of chance in casinos give rise to claims where they take place in a casino licensed by the competent authority.

<sup>237</sup> Inserted by Annex No 5 to the Gambling Act of 18 Dec 1998, in force since 1 April 2000 (AS 2000 677; BBl 1997 III 145).



## Title Twenty-Two: The Life Annuity Contract and the Lifetime Maintenance Agreement

### Art. 516

A. Life annuity  
I. Nature

<sup>1</sup> A life annuity may be created for the lifetime of the annuitant, the grantor or a third party.

<sup>2</sup> In the absence of any specific agreement, the presumption is that it is settled for the life of the annuitant.

<sup>3</sup> Unless otherwise agreed, an annuity settled for the life of the grantor or of a third party passes to the heirs of the annuitant.

### Art. 517

II. Formal requirement

The life annuity contract is valid only if done in writing.

### Art. 518

III. Rights of the annuitant  
1. Exercise of entitlement

<sup>1</sup> Unless otherwise agreed, the life annuity is payable every six months in advance.

<sup>2</sup> If the person on whom the life annuity is settled dies before the end of the period for which it is payable in advance, the grantor owes the full amount.

<sup>3</sup> If the grantor is declared bankrupt, the annuitant may assert his entitlements by bringing a capital claim for the amount that would be required at the time the grantor is declared bankrupt to establish an equivalent contract of annuity with a reputable annuity institution.

### Art. 519

2. Assignment<sup>238</sup>

<sup>1</sup> Unless otherwise agreed, the life annuitant may assign his rights.

<sup>2</sup> ...<sup>239</sup>

### Art. 520

IV. Life annuities under the law governing insurance policies

The provisions of this Code governing life annuity contracts do not apply to life annuity contracts subject to the Federal Act of 2 April 1908<sup>240</sup> on Insurance Policies, with the exception of the provision governing withdrawal of annuity entitlements.

<sup>238</sup> Amended by Annex No 6 to the FA of 16 Dec 1994, in force since 1 Jan 1997 (AS 1995 1227; BBl 1991 III 1).

<sup>239</sup> Repealed by Annex No 6 to the FA of 16 Dec 1994, with effect from 1 Jan 1997 (AS 1995 1227; BBl 1991 III 1).

<sup>240</sup> SR 221.229.1

B. Lifetime maintenance agreement  
I. Definition

### Art. 521

<sup>1</sup> A lifetime maintenance agreement is a contract in which the beneficiary undertakes to transfer an estate or individual assets to the settlor in return for an undertaking to provide maintenance and care for his lifetime.

<sup>2</sup> If the settlor is appointed heir to the beneficiary, the entire relationship is subject to the provisions governing contracts of succession.

II. Conclusion  
1. Form

### Art. 522

<sup>1</sup> The lifetime maintenance agreement must be done in the same form as a contract of succession, even where it does not involve the designation of an heir.

<sup>2</sup> However, where it is concluded with a licensed care home on conditions approved by the competent authority, written form is sufficient.

2. Security

### Art. 523

A beneficiary who transfers land to the other party retains a statutory lien on the property as security for his claims in the same manner as a seller.

III. Content

### Art. 524

<sup>1</sup> The beneficiary becomes part of the settlor's household and the settlor is obliged to provide him such benefits as he might reasonably expect to receive in the light of the value of the assets transferred and his previous standard of living.

<sup>2</sup> The settlor is obliged to provide the beneficiary with appropriate accommodation and maintenance and, in the event of his illness, with the necessary care and medical treatment.

<sup>3</sup> Subject to approval by the competent authority, care homes may adopt house rules whereby such benefits are incorporated as generally binding contractual terms.

IV. Challenge and reduction

### Art. 525

<sup>1</sup> A lifetime maintenance agreement may be challenged by persons to whom the beneficiary has a legal duty of maintenance where conclusion of the agreement would deprive the beneficiary of the means of discharging such duty.

<sup>2</sup> Instead of rescinding the agreement, the court may order the settlor to maintain such persons, with any such maintenance being brought into account against the benefits owed to the beneficiary under the lifetime maintenance agreement.

<sup>3</sup> Actions in abatement by heirs and legal challenges by creditors are reserved.

### Art. 526

V. Termination  
1. Notice

<sup>1</sup> The lifetime maintenance agreement may be terminated by either party at any time subject to six months' notice, where according to the agreement the performance of one party is substantially greater in value than that of the other and the party benefiting from such imbalance cannot show that the other intended it as a gift.

<sup>2</sup> The decisive criterion here is the relation between the capital and the life annuity according to the principles applied by any reputable annuity institution.

<sup>3</sup> Performance already rendered at the time of termination is returned after its capitalised value plus interest has been set off.

### Art. 527

2. Unilateral termination

<sup>1</sup> Either party may unilaterally terminate the agreement where the relationship has become unconscionable as a result of breach of contractual obligations or where other good cause has rendered its continuation exceedingly difficult or impossible.

<sup>2</sup> Where the agreement is terminated on such grounds, the party at fault must pay adequate compensation to the innocent party in addition to returning the performance received.

<sup>3</sup> Instead of rescinding the agreement, at the request of one party or of its own accord the court may dissolve the joint household and award a life annuity to the beneficiary by way of compensation.

### Art. 528

3. Termination on the death of the settlor

<sup>1</sup> On the death of the settlor the beneficiary may within one year insist that the agreement be terminated.

<sup>2</sup> In this event, he has a claim against the heirs equivalent to the claim he would have in the event of the settlor's bankruptcy.

### Art. 529

VI. Non-transferable claim, asserting claim in the event of bankruptcy and seizure

<sup>1</sup> The beneficiary's claim is non-transferable.

<sup>2</sup> In the event of the settlor's bankruptcy, the beneficiary has a claim equivalent to the capital that would be required to acquire from a reputable annuity institution a life annuity equal in value to the benefits owed to him by the settlor.

<sup>3</sup> In the case of debt enforcement by attachment, the beneficiary may participate in the attachment in respect of this claim without need to bring prior enforcement proceedings.

## **Title Twenty-Three: The Simple Partnership**

### **Art. 530**

#### A. Definition

<sup>1</sup> A partnership is a contractual relationship in which two or more persons agree to combine their efforts or resources in order to achieve a common goal.

<sup>2</sup> A simple partnership within the meaning of this Title is any partnership that does not fulfil the distinctive criteria of any of the other types of partnership codified herein.

### **Art. 531**

#### B. Relationship between partners I. Contributions

<sup>1</sup> Each partner must make a contribution, which may be money, objects, claims or labour.

<sup>2</sup> Unless otherwise agreed, contributions must be equal and of the nature and size required to achieve the partnership's purpose.

<sup>3</sup> The bearing of risk by and warranty obligations of the partners are governed *mutatis mutandis* by the rules on leases where a contribution involves the transfer by an individual partner of the use of an object, and by the rules governing contracts of sale where it involves transfer of title.

### **Art. 532**

#### II. Profit and loss 1. Profit sharing

Each partner is obliged to share with his fellow partners any profit which by nature belongs to the partnership.

### **Art. 533**

#### 2. Participation in profits and losses

<sup>1</sup> Unless otherwise agreed, each partner has an equal share in profits and losses regardless of the nature and amount of his contribution.

<sup>2</sup> Where only the partner's share in the profits or his share in the losses is agreed, such agreement applies to both.

<sup>3</sup> It is permitted to agree that a partner whose contribution to the common purpose consists of labour will participate in the profits but not in the losses.

### **Art. 534**

#### III. Partnership resolutions

<sup>1</sup> Partnership resolutions are made with the consent of all partners.

<sup>2</sup> Where the partnership agreement provides for resolutions to be passed by majority vote, it is defined as a numerical majority of the partners.

#### **Art. 535**

IV. Management of partnership business

<sup>1</sup> All partners have the right to manage the partnership unless the task is entrusted exclusively to one or more partners or to third parties by agreement or resolution.

<sup>2</sup> Where all or several partners have the right to manage the partnership, each of them may act without the involvement of the others, although every other partner authorised to manage the partnership has the right to object to and thereby forestall any management action before it is carried out.

<sup>3</sup> The unanimous consent of all the partners is required to appoint a general attorney or to carry out transactions which transcend the scope of ordinary business, unless there is risk in delay.

#### **Art. 536**

V. Liability between partners  
1. Prohibition of competition

No partner may carry out transactions for his own benefit which thwart or obstruct the purpose of the partnership.

#### **Art. 537**

2. Claims arising from partnership activities

<sup>1</sup> Where one partner incurs expenses or contracts liabilities in connection with affairs conducted on behalf of the partnership or suffers losses as a direct consequence of his management activities or the intrinsically associated risks, the other partners share his liability.

<sup>2</sup> A partner who makes cash advances on behalf of the partnership may claim interest as of the date on which they were made.

<sup>3</sup> By contrast, he is not entitled to remuneration for his personal services.

#### **Art. 538**

3. Due diligence

<sup>1</sup> Each partner must conduct partnership affairs with the diligence and care that he would normally devote to his own affairs.

<sup>2</sup> He is liable to the other partners for any loss or damage caused through his fault and may not set off against such loss or damage the benefits obtained for the partnership in his other activities.

<sup>3</sup> Managing partners who are remunerated for their management services are liable in accordance with the provisions governing agency.

VI. Withdrawal and restriction of management authority

### Art. 539

<sup>1</sup> The management authority granted to one of the partners under the partnership agreement may not be withdrawn or restricted by the other partners without good cause.

<sup>2</sup> Where good cause exists, authority may be withdrawn by each of the other partners even where the partnership agreement provides otherwise.

<sup>3</sup> In particular, good cause is deemed to exist where the managing partner is guilty of a serious breach of his duties or has become incapable of proper management of the partnership's affairs.

VII. Managing partners and other partners

1. In general

### Art. 540

<sup>1</sup> Unless this Title or the partnership agreement provides otherwise, the relationship between the managing partners and the other partners is subject to the provisions governing agency.

<sup>2</sup> Where a partner who lacks management authority conducts business on the partnership's behalf or a managing partner exceeds his management authority, the provisions governing agency without authority apply.

2. Right to information on the affairs of the partnership

### Art. 541

<sup>1</sup> A partner who lacks management authority has the right to receive information on the status of the partnership's affairs, to inspect its books and documents and to obtain a summary statement of its financial position for his personal information.

<sup>2</sup> Any contrary agreement is void.

VIII. Admission of new partners and sub-participation

### Art. 542

<sup>1</sup> No partner may admit a third party into the partnership without the consent of the other partners.

<sup>2</sup> Where a partner unilaterally grants a third party a participation in his own share in the partnership or assigns his entire share to the third party, the latter does not become a partner and in particular does not acquire any right to information on partnership affairs.

C. Relationship between partners and third parties  
I. Representation

### Art. 543

<sup>1</sup> A partner who deals with a third party on behalf of the partnership but in his own name acquires rights and obligations as against that third party in a purely individual capacity.

<sup>2</sup> Where a partner deals with a third party in the name of the partnership or all the partners, the other partners acquire rights and obliga-

tions as against that third party only to the extent envisaged by the provisions governing representation.

<sup>3</sup> A partner is presumed empowered to represent the partnership or all the partners in dealings with third parties as soon as management authority is conferred on him.

#### Art. 544

II. Effects of representation

<sup>1</sup> Objects, rights in rem and claims transferred to or acquired for the partnership belong jointly to the partners as stipulated in the partnership agreement.

<sup>2</sup> Unless otherwise provided in the partnership agreement, the creditors of a partner may claim only the share in the proceeds of liquidation of that partner by way of satisfaction.

<sup>3</sup> Subject to contrary agreement, partners are jointly and severally liable for obligations to third parties contracted jointly or through representatives.

#### Art. 545

D. Dissolution  
I. Grounds for dissolution  
1. In general

<sup>1</sup> The partnership is dissolved:

1. where the purpose of the partnership has been achieved or become impossible to achieve;
2. on the death of one of the partners, unless it was previously agreed that the partnership would continue with his heirs;
- 3.<sup>241</sup> where the share in the proceeds of liquidation of a partner is subject to compulsory sale or one of the partners is declared bankrupt or made subject to a general deputyship;
4. by unanimous decision of the partners;
5. on expiry of the period for which the partnership was established;
6. by notice of termination served by one of the partners, where such right was reserved in the partnership agreement or the partnership was established for an indefinite duration or for the lifetime of one of the partners;
7. by court judgment in cases of dissolution for good cause.

<sup>2</sup> The dissolution of the partnership may be requested for good cause before the duration of the partnership agreement expires or, where it was established for an indefinite duration, with immediate effect.

<sup>241</sup> Amended by Annex No 10 of the FA of 19 Dec 2008 (Adult Protection, Law of Persons and Law of Children), in force since 1 Jan 2013 (AS 2011 725; BBl 2006 7001).

2. Partnership of indefinite duration

### Art. 546

<sup>1</sup> Where the partnership was established for an indefinite duration or for the lifetime of one of the partners, each partner may terminate the partnership by giving six months' notice.

<sup>2</sup> Notice must be given in good faith and not at an inopportune juncture and, where an annual accounting period is envisaged, it must expire at the end of a financial year.

<sup>3</sup> Where on expiry of the term for which it had been established the partnership is tacitly continued, it is deemed renewed for an indefinite duration.

II. Effect of dissolution on business management

### Art. 547

<sup>1</sup> Where the partnership is dissolved for any reason other than notice of termination, a partner retains his authority to manage the partnership's business until he learns of the dissolution or ought to have learned of it had he shown due diligence.

<sup>2</sup> Where the partnership is dissolved on the death of a partner, the heir of the deceased must inform the other partners of his death without delay and continue in good faith to attend to the partnership affairs of the deceased until the requisite arrangements have been made.

<sup>3</sup> The other partners must likewise continue to manage the partnership's business in the interim.

III. Liquidation  
1. Treatment of contributions

### Art. 548

<sup>1</sup> Contributions to the partnership do not simply revert to those who made them in the liquidation that the partners must carry out after the partnership is dissolved.

<sup>2</sup> However, each partner is entitled to the value for which his contribution was accepted.

<sup>3</sup> Where no such value was determined, his claim is for the value of the contribution at the time it was made.

2. Division of surplus and deficit

### Art. 549

<sup>1</sup> Where a surplus remains after satisfaction of partnership debts, reimbursement of the expenses incurred and advances made by each partner and return of the value of contributions, it is divided as profit among the partners.

<sup>2</sup> Where, after satisfaction of debts and the reimbursement of expenses and advances, the partnership's assets are not sufficient to cover the return of contributions, the shortfall is borne equally by the partners as a loss.



3. Liquidation  
method

### Art. 550

<sup>1</sup> The liquidation following the dissolution of the partnership must be carried out jointly by all partners, including those without management authority.

<sup>2</sup> However, where the partnership agreement related only to certain specific transactions to be carried out by one partner in his own name but on behalf of the partnership, that partner must carry out such transactions and give account of them to the other partners even after the partnership has been dissolved.

IV. Liability  
towards third  
parties

### Art. 551

The dissolution of the partnership does not affect obligations entered into with third parties.

## Division Three: Commercial Enterprises and the Cooperative<sup>242</sup>

### Title Twenty-Four: The General Partnership

#### Section One: Definition and Formation

A. Commercial  
partnerships

### Art. 552

<sup>1</sup> A general partnership is a partnership in which two or more natural persons join together without limiting their liability towards creditors of the partnership in order to operate a trading, manufacturing or other form of commercial business under one business name.

<sup>2</sup> The members of the partnership must have it entered in the commercial register.

B. Non-  
commercial  
partnerships

### Art. 553

Where a partnership does not operate a commercial business, it does not exist as a general partnership until it has itself entered in the commercial register.

<sup>242</sup> Amended by Federal Act of 18 Dec 1936, in force since 1 July 1937 (AS 53 185; BBl 1928 I 205, 1932 I 217). See also the Final and Transitional Provisions of Titles XXIV to XXXIII, at the end of this Code.

C. Entry in the commercial register  
I. Place of registration

**Art. 554<sup>243</sup>**

The partnership must be registered in the commercial register for the place where its seat is located.

II. Representation

**Art. 555**

The only details concerning arrangements for representation that are admissible for entry in the commercial register are those which limit it to one partner or specified partners or which provide for representation of the partnership by one partner acting jointly with other partners or with persons vested with a registered power of attorney.

III. Formal requirements

**Art. 556**

<sup>1</sup> All applications to have facts entered or entries modified must be signed by all the partners in person at the commercial registry or submitted in writing bearing duly authenticated signatures.

<sup>2</sup> Partners who are to represent the partnership must enter the partnership's business name and their own signature in person at the commercial registry or submit these in a duly authenticated form.

**Section Two: Relationship between Partners**

A. Freedom of contract, reference to simple partnership

**Art. 557**

<sup>1</sup> The relationship between the partners is primarily determined by the partnership agreement.

<sup>2</sup> Unless otherwise agreed, the provisions governing simple partnerships apply subject to the modifications set out in the following provisions.

B. Financial reporting<sup>244</sup>

**Art. 558**

<sup>1</sup> For each financial year, the profit or loss and each partner's share thereof are determined on the basis of the annual accounts.<sup>245</sup>

<sup>2</sup> The interest on each partner's share of the capital may be credited to that partner as provided in the agreement even if that share has been

<sup>243</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>244</sup> Amended by No I 3 of the FA of 23 Dec 2011 (Financial Reporting Law), in force since 1 Jan 2013 (AS 2012 6679; BBl 2008 1589).

<sup>245</sup> Amended by No I 3 of the FA of 23 Dec 2011 (Financial Reporting Law), in force since 1 Jan 2013 (AS 2012 6679; BBl 2008 1589).

reduced by the loss for that financial year. Unless otherwise agreed, the interest rate is four per cent.

<sup>3</sup> When calculating the profit or loss, the contractual fee for the work done by a partner is treated as a debt of the partnership.

### Art. 559

C. Entitlement to profit, interest and fees

<sup>1</sup> Each partner has the right to draw profit, interest and fees for the previous financial year from the partnership's funds.

<sup>2</sup> Where so provided under the agreement, interest and fees may be drawn during the financial year, whereas profit may not be drawn until the annual report has been approved.<sup>246</sup>

<sup>3</sup> Any profit, interest and fees not drawn by the partner are added to his share of the partnership's capital once the annual report has been approved, provided that none of the other partners objects.<sup>247</sup>

### Art. 560

D. Losses

<sup>1</sup> Where a partner's share of the capital has been reduced by losses, he remains entitled to his fees and the interest on his reduced share but may receive his share of the profit only when his share of the capital has been reconstituted.

<sup>2</sup> No partner is obliged to make a higher contribution than stipulated in the agreement or to make good any reduction in his contribution caused by losses.

### Art. 561

E. Prohibition of competition

Without the consent of the other partners, no partner may engage in the line of business in which the partnership operates either for his own account or for third parties or participate in another business as a partner with unlimited liability, a limited partner or a member of a limited liability company.

## Section Three: Relationship between the Partnership and Third Parties

### Art. 562

A. In general

The partnership may acquire rights, assume obligations, sue and be sued in its own name.

<sup>246</sup> Amended by No I 3 of the FA of 23 Dec 2011 (Financial Reporting Law), in force since 1 Jan 2013 (AS 2012 6679; BBl 2008 1589).

<sup>247</sup> Amended by No I 3 of the FA of 23 Dec 2011 (Financial Reporting Law), in force since 1 Jan 2013 (AS 2012 6679; BBl 2008 1589).

B. Representa-  
tion  
I. General  
principle

### Art. 563

Unless the commercial register contains an entry to the contrary, bona fide third parties may safely assume that any partner has authority to represent the partnership.

### Art. 564

II. Scope

<sup>1</sup> Any partner entitled to represent the partnership is authorised to carry out in the partnership's name all transactions that serve the partnership's objects.

<sup>2</sup> Any restriction of the scope of such authority to represent the partnership has no effect as against bona fide third parties.

### Art. 565

III. Withdrawal

<sup>1</sup> Authority to represent the partnership may be withdrawn from a partner for good cause.

<sup>2</sup> Where a partner makes a prima facie case for the existence of good cause and there is risk in delay, on his application the court may issue an interim order withdrawing authority to represent the partnership. The court's order must be entered in the commercial register.

### Art. 566

IV. Registered  
power of  
attorney and  
commercial  
agency

A registered attorney or commercial agent may be appointed to manage the business of the partnership as a whole only with the consent of all partners authorised to represent the partnership, but such appointment may be revoked as against third parties by any one of them.

### Art. 567

V. Transactions  
and liability in  
tort

<sup>1</sup> The partnership acquires rights and assumes obligations by the transactions concluded in its name by any partner authorised to represent it.

<sup>2</sup> For such effect to occur, it is sufficient that the intention to act on behalf of the partnership can be inferred from the circumstances.

<sup>3</sup> The partnership is liable in damages for any tort committed by a partner in the exercise of his partnership function.

### Art. 568

C. Position of  
creditors  
I. Partners'  
liability

<sup>1</sup> The partners are jointly and severally liable with their entire assets for all obligations of the partnership.

<sup>2</sup> Any contrary agreement between partners is void as against third parties.

<sup>3</sup> However, a partner may not be held personally liable for a partnership debt, even after he leaves the partnership, unless he has been declared bankrupt or the partnership has been dissolved or debt enforcement proceedings have been brought against it without success. This does not apply to a partner's liability under a joint and several contract of surety concluded in favour of the partnership.

### Art. 569

II. Liability of new partners

<sup>1</sup> A person joining a general partnership is jointly and severally liable with his entire assets together with the other partners even for the partnership's obligations that predate his accession.

<sup>2</sup> Any contrary agreement between partners is void as against third parties.

### Art. 570

III. Insolvency of the partnership

<sup>1</sup> The partnership's creditors are entitled to satisfaction from the partnership's assets to the exclusion of the personal creditors of the individual partners.

<sup>2</sup> Partners have no claim as creditors in insolvency for their capital contributions and accrued interest, but may assert claims for interest already due, fees and any expenses incurred on the partnership's behalf.

### Art. 571

IV. Insolvency of the partnership and bankruptcy of the partners

<sup>1</sup> The insolvency of the partnership does not result in the bankruptcy of the partners.

<sup>2</sup> Likewise, the bankruptcy of one of the partners does not result in the insolvency of the partnership.

<sup>3</sup> The rights of partnership creditors in the event of the bankruptcy of a partner are governed by the Debt Collection and Bankruptcy Act of 11 April 1889<sup>248</sup>.

### Art. 572

D. Position of personal creditors of partners

<sup>1</sup> The personal creditors of a partner have no rights to the partnership's assets for the purposes of satisfying or securing their claims.

<sup>2</sup> Enforcement proceedings brought by them are limited to the interest, fees, profit and share in the proceeds of liquidation payable to their debtor in his capacity as partner.

**Art. 573**

E. Set off

<sup>1</sup> A personal creditor of a partner may not set off his claim against a debt owed to the partnership.

<sup>2</sup> Similarly, a partner may not set off a debt to a personal creditor against any debt owed by the creditor to the partnership.

<sup>3</sup> However, where a partnership creditor is simultaneously the personal debtor of a partner, the two debts may be set off against each other provided the partner may be held personally liable for any resulting debt to the partnership.

**Section Four: Dissolution and Withdrawal****Art. 574**

A. In general

<sup>1</sup> The partnership is dissolved by the commencement of insolvency proceedings against it. In other respects, the provisions governing simple partnerships apply to dissolution except where otherwise provided in this Title.

<sup>2</sup> Other than in the event of insolvency, the partners must report the dissolution to the commercial registrar.

<sup>3</sup> Where an action for dissolution of the partnership is brought, on application by one of the parties the court may order provisional measures.

**Art. 575**

B. Termination by personal creditors

<sup>1</sup> In the event of the bankruptcy of a partner, the bankruptcy administration may petition for dissolution of the partnership by giving at least six months' notice even where the partnership was formed for a fixed term.

<sup>2</sup> The same right accrues to a creditor who has attached the share in the proceeds of liquidation of a partner indebted to him.

<sup>3</sup> However, until such dissolution has been entered in the commercial register, the partnership or the other partners may prevent the notice from taking effect by satisfying the bankrupt estate or the creditor pursuing his claim.

**Art. 576**C. Withdrawal of partners  
I. Agreement

Where the partners agreed prior to dissolution that, notwithstanding the withdrawal of one or more partners, the partnership will be continued by the remaining partners, it ceases to exist only for those that leave; in other respects it continues with all existing rights and obligations.

**Art. 577**II. Exclusion by  
court order

Where there is good cause for the dissolution of the partnership that pertains chiefly to the person of one or more partners, at the request of all the other partners the court may rule that the partner or partners in question be excluded from the partnership and that their shares of the partnership's assets be allocated to them.

**Art. 578**III. Exclusion by  
the other  
partners

Where a partner is declared bankrupt or a creditor who has attached the share in the proceeds of liquidation of a partner indebted to him requests that the partnership be dissolved, the other partners may exclude the partner in question and allocate his share of the partnership's assets to him.

**Art. 579**IV. In the case of  
two partners

1 Where the partnership comprises two partners only, the partner who has not given rise to any cause for dissolution may, on the same conditions, continue the partnership's affairs and allocate the other partner's share of the partnership's assets to him.

2 The court may issue an order to the same effect where dissolution has been requested for good cause pertaining chiefly to the person of one of the partners.

**Art. 580**V. Determining  
the share

1 The amount payable to a partner leaving the partnership is determined by agreement.

2 Where no provision is made on this matter in the partnership agreement and the parties cannot reach agreement, the court determines the amount with due regard to the asset position of the partnership at the time the partner leaves and any fault attributable to the departing partner.

**Art. 581**

VI. Registration

The departure of a partner and the continuation of the partnership's affairs by one of the partners must be entered in the commercial register.

## Section Five: Liquidation

### Art. 582

A. General principle

Following its dissolution, the partnership is liquidated in accordance with the following provisions, unless the partners have agreed on an alternative approach or the partnership's assets are subject to insolvency proceedings.

### Art. 583

B. Liquidators

<sup>1</sup> The liquidation is carried out by the partners who are authorised to represent the partnership, unless they are prevented from so doing for reasons pertaining to their person or the partners agree to appoint other liquidators.

<sup>2</sup> At the request of a partner, for good cause the court may dismiss certain liquidators and appoint others to replace them.

<sup>3</sup> The liquidators are entered in the commercial register, even where the representation of the partnership remains unchanged.

### Art. 584

C. Representation of heirs

The heirs of a partner must appoint a joint representative for the purpose of the liquidation.

### Art. 585

D. Rights and obligations of the liquidators

<sup>1</sup> The liquidators wind up the dissolved partnership's current business, discharge its obligations, call in all debts receivable and realise its assets as required for the division thereof.

<sup>2</sup> They represent the partnership in all transactions carried out for liquidation purposes, are entitled to conduct legal proceedings, reach settlements, conclude arbitration agreements and even, where required for liquidation purposes, effect new transactions.

<sup>3</sup> Where a partner objects to a decision by the liquidators to sell partnership assets at an overall sale price or to their refusal of such a sale or to the manner in which they intend to dispose of immovable property, at his request the court will decide the matter.

<sup>4</sup> The partnership is liable for any loss or damage resulting from torts committed by a liquidator in the exercise of his function.

### Art. 586

E. Provisional distribution

<sup>1</sup> Funds and other assets not required during the liquidation are distributed among the partners on a provisional basis and brought into account against their final share in the proceeds of liquidation.



2 The funds required to cover disputed obligations or obligations not yet due must be retained.

### **Art. 587**

F. Division  
I. Balance sheet 1 The liquidators draw up a balance sheet at the beginning of the liquidation.

2 Where the liquidation lasts for an extended period, interim balance sheets are drawn up every year.

### **Art. 588**

II. Repayment of capital and distribution of surplus 1 Assets remaining after redemption of all partnership debts are used first to repay the capital to the partners and then to pay interest accrued over the liquidation period.

2 Any surplus is distributed among the partners in accordance with the provisions governing partners' shares in the profit.

### **Art. 589**

G. Deletion from the commercial register On completion of the liquidation, the liquidators apply to have the partnership's business name deleted from the commercial register.

### **Art. 590**

H. Archiving of ledgers and other documents 1 The ledgers and other documents of the dissolved partnership are kept for ten years commencing on the date of the partnership's deletion from the commercial register at a location designated by the partners or, if they cannot reach agreement, by the registrar.

2 The partners and their heirs retain the right to inspect the ledgers and other documents.

## **Section Six: Time Limits**

### **Art. 591**

A. Object and limitation period 1 Claims of partnership creditors against a partner for partnership debts become time-barred five years after the notice of his withdrawal or of the dissolution of the partnership is published in the Swiss Official Gazette of Commerce, unless the debt is by its nature subject to a shorter limitation period.

2 Where the debt does not fall due until after such notice, the limitation period commences on the due date.

3 The time limits do not apply to claims between partners.

**Art. 592**

B. Special cases <sup>1</sup> The five-year limitation period may not be invoked against a creditor seeking satisfaction solely from undivided partnership assets.

<sup>2</sup> Where a partner takes over the partnership's business with all its assets and liabilities, he may not invoke the five-year limitation period against its creditors. By contrast, for partners who have left the partnership, the five-year limitation period is replaced by the two-year limitation period in accordance with the principles governing assumption of debt; the same applies in the event that a third party takes over the partnership's business with all its assets and liabilities.

**Art. 593**

C. Interruption An interruption of the limitation period as against an ongoing partnership or another partner does not interrupt the limitation period as against a departing partner.

**Title Twenty-Five: The Limited Partnership****Section One: Definition and Formation****Art. 594**

A. Commercial partnerships

<sup>1</sup> A limited partnership is a partnership in which two or more persons join together in order to operate a trading, manufacturing or other form of commercial business under a single business name in such a manner that at least one person is a general partner with unlimited liability but one or more others are limited partners liable only up to the amount of their specific contributions.

<sup>2</sup> Partners with unlimited liability must be natural persons, but limited partners may also be legal entities and commercial enterprises.

<sup>3</sup> The partners must have the partnership entered in the commercial register.

**Art. 595**

B. Non-commercial partnerships

Where a limited partnership does not operate a commercial business, it does not exist as a limited partnership until it has itself entered in the commercial register.

**Art. 596**

C. Entry in the commercial register  
I. Place and contributions in kind<sup>249</sup>

<sup>1</sup> The partnership must be registered in the commercial register for the place where its seat is located.<sup>250</sup>

<sup>2</sup> ...<sup>251</sup>

<sup>3</sup> Where the specific contributions of limited partners are made wholly or partly in kind, the contribution in kind must be expressly referred to as such and its precise value specified in the registration application and in the entry in the commercial register.

**Art. 597**

II. Formal requirements

<sup>1</sup> All applications to have facts entered or entries modified must be signed by all the partners in person at the commercial registry or submitted in writing bearing duly authenticated signatures.

<sup>2</sup> Partners with unlimited liability who are to represent the partnership must enter the partnership's business name and their own signature in person at the commercial registry or submit these in a duly authenticated form.

**Section Two: Relationship between Partners****Art. 598**

A. Freedom of contract, reference to general partnership

<sup>1</sup> The relationship between the partners is primarily determined by the partnership agreement.

<sup>2</sup> Unless otherwise agreed, the provisions governing general partnerships apply subject to the modifications set out in the following provisions.

**Art. 599**

B. Management of business

The partnership's affairs are managed by the partner or partners with unlimited liability.

<sup>249</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>250</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>251</sup> Repealed by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), with effect from 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

C. Position of limited partners

**Art. 600**

<sup>1</sup> A limited partner is by definition neither entitled nor obliged to manage the affairs of the partnership.

<sup>2</sup> Nor is he entitled to object to actions taken by managing partners, providing these fall within the scope of the ordinary business activities of the partnership.

<sup>3</sup> He has the right to request a copy of the profit and loss account and the balance sheet and to verify their accuracy by inspecting the partnership's ledgers and other documents or have them verified by an impartial expert; in the event of dispute, the expert is appointed by the court.<sup>252</sup>

D. Share in profit and loss

**Art. 601**

<sup>1</sup> A limited partner's participation in any loss is limited to the amount of his specific contribution.

<sup>2</sup> In the absence of agreement on the limited partners' share in profits and losses, it is determined by the court at its discretion.

<sup>3</sup> Where the limited partner's specific contribution is not fully paid up or has been subsequently reduced, he may receive the interest, profit and fees due to him only when his contribution has been fully paid in or reconstituted.

**Section Three: Relationship between the Partnership and Third Parties**

**Art. 602**

A. In general

The partnership may acquire rights, assume obligations, and sue and be sued in its own name.

**Art. 603**

B. Representation

The partnership is represented by its general partner or partners in accordance with the rules governing general partnerships.

**Art. 604**

C. Liability of general partners

A partner with unlimited liability may be sued for a partnership debt only if the partnership has been dissolved or debt enforcement proceedings have been brought against it without success.

<sup>252</sup> Amended by No I 3 of the FA of 23 Dec 2011 (Financial Reporting Law), in force since 1 Jan 2013 (AS 2012 6679; BBl 2008 1589).

- Art. 605**  
 D. Liability of limited partners  
 I. Acting for the partnership  
 A limited partner conducting business on behalf of the partnership without stating expressly that he is acting as its registered attorney or commercial agent is liable to bona fide third parties for obligations resulting from such business as if he were a general partner.
- Art. 606**  
 II. Lack of registration  
 Where the partnership has engaged in business prior to being entered in the commercial register, a limited partner is liable to bona fide third parties for obligations resulting from such business as if he were a general partner unless he can prove that the third parties were aware of the limits to his liability.
- Art. 607<sup>253</sup>**  
 III. ...
- Art. 608**  
 IV. Scope of liability  
 1 A limited partner is liable to third parties in the amount of his specific contribution as entered in the commercial register.  
 2 Where he has stated a higher amount to third parties or the partnership has done so with his knowledge, he is liable up to such higher amount.  
 3 Creditors are at liberty to show that the value ascribed to contributions in kind did not correspond to their real value at the time they were made.
- Art. 609**  
 V. Reduction of limited partner's specific contribution  
 1 Where by agreement with the other partners or by means of withdrawals a limited partner has reduced his specific contribution as entered in the commercial register or otherwise announced, such modification has no effect as against third parties until it has been entered in the commercial register and published.  
 2 For obligations contracted prior to such publication, the limited partner remains liable in the unmodified amount.
- Art. 610**  
 VI. Creditors' right of action  
 1 For the duration of the partnership, its creditors have no right of action against a limited partner.

<sup>253</sup> Repealed by No I of the FA of 25 Sept. 2015 (Law of Business Names), with effect from 1 July 2016 (AS 2016 1507; BBl 2014 9305).

<sup>2</sup> If the partnership is dissolved, the creditors, liquidators and insolvency administrators may request that the limited partner's specific contribution be allocated to the liquidation or insolvency assets to the extent that it has not been paid in or has been repaid to the limited partner.

#### **Art. 611**

VII. Entitlement to interest and profit

<sup>1</sup> Limited partners are entitled to interest and profit only where and to the extent that payment thereof does not result in a reduction of their specific contribution.

<sup>2</sup> However, limited partners are required to repay interest and profit unlawfully received. Article 64 applies.<sup>254</sup>

#### **Art. 612**

VIII. Joining limited partnerships

<sup>1</sup> A person joining a general or limited partnership as a limited partner is liable with his specific contribution for all partnership liabilities including those that were contracted prior to his accession.

<sup>2</sup> Any agreement to the contrary between the partners is void as against third parties.

#### **Art. 613**

E. Position of personal creditors

<sup>1</sup> The personal creditors of a general partner or a limited partner have no rights to the partnership's assets for the purposes of satisfying or securing their claims.

<sup>2</sup> Enforcement proceedings brought by them are limited to the interest, profit and share in the proceeds of liquidation payable to their debtor and any fees due to him in his capacity as partner.

#### **Art. 614**

F. Set off

<sup>1</sup> Where a partnership creditor is simultaneously the personal debtor of a limited partner, the creditor has no right to set off the two debts against each other unless the limited partner has unlimited liability.

<sup>2</sup> In other respects, set off is subject to the provisions governing general partnerships.

#### **Art. 615**

G. Insolvency  
I. In general

<sup>1</sup> The insolvency of the partnership does not result in the bankruptcy of the partners.

<sup>254</sup> Amended by No I 3 of the FA of 23 Dec 2011 (Financial Reporting Law), in force since 1 Jan 2013 (AS 2012 6679; BBl 2008 1589).

<sup>2</sup> Likewise, the bankruptcy of one of the partners does not result in the insolvency of the partnership.

### **Art. 616**

II. Insolvency of the partnership

<sup>1</sup> The partnership's creditors are entitled to satisfaction from the partnership's assets to the exclusion of the personal creditors of the individual partners.

<sup>2</sup> Limited partners have no claim as creditors in insolvency for their specific capital contributions.

### **Art. 617**

III. Procedure against general partners

Where the partnership's assets are insufficient to satisfy the partnership's creditors, the latter are entitled to seek satisfaction for the entire remainder of their claims from the personal assets of each individual general partner in competition with that partner's personal creditors.

### **Art. 618**

IV. Bankruptcy of limited partners

In the event of the bankruptcy of a limited partner, neither the partnership's creditors nor the partnership itself have preferential rights over his personal creditors.

## **Section Four: Dissolution, Liquidation, Time Limits**

### **Art. 619**

<sup>1</sup> The provisions governing general partnerships also apply to the dissolution and liquidation of limited partnerships and to the limitation periods applicable to claims against the partners.

<sup>2</sup> Where a limited partner is declared bankrupt or his share in the proceeds of liquidation is attached, the provisions governing partners in general partnerships apply *mutatis mutandis*. However, the partnership is not dissolved by the death of a limited partner or his being made subject to a general deputyship.<sup>255</sup>

<sup>255</sup> Second sentence amended by Annex No 10 of the FA of 19 Dec 2008 (Adult Protection, Law of Persons and Law of Children), in force since 1 Jan 2013 (AS 2011 725; BBl 2006 7001).

## Title Twenty-Six<sup>256</sup>: The Company Limited by Shares

### Section One: General Provisions

#### Art. 620

##### A. Definition

<sup>1</sup> A company limited by shares is a company with its own business name whose pre-determined capital (share capital)<sup>257</sup> is divided into specific amounts (shares) and whose liabilities are payable only from the company assets.

<sup>2</sup> The shareholders are required only to fulfil the duties specified in the articles of association and are not personally liable for the company's obligations.

<sup>3</sup> A company limited by shares may also be established for a purpose that is non-commercial in character.

#### Art. 621<sup>258</sup>

##### B. Minimum share capital

The share capital must amount to at least 100,000 francs.

#### Art. 622

##### C. Shares

##### I. Types

<sup>1</sup> The shares may be either registered or bearer shares. Shares issued as uncertificated securities in accordance with the Uncertificated Securities Act of 3 October 2008<sup>259</sup> are either registered or bearer shares.<sup>260</sup>

<sup>1bis</sup> Bearer shares are only permitted if the company has equity securities listed on a stock exchange or the bearer shares are organised as intermediated securities in accordance with the Intermediated Securities Act of 3 October 2008 and deposited with a custodian in Switzerland designated by the company or entered in the main register.<sup>261</sup>

<sup>2</sup> Shares of both types may exist at the same time in a ratio fixed by the articles of association.

<sup>2bis</sup> A company with bearer shares must arrange for an entry to be made in the Commercial Register as to whether it has equity securities

<sup>256</sup> See also the Final Provisions relating to this Title at the end of this Code.

<sup>257</sup> Term in accordance with No II 1 of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745). This amendment has been taken into account throughout the Code.

<sup>258</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745)

<sup>259</sup> SR 957.1

<sup>260</sup> Amended by Annex No 3 of the Uncertificated Securities Act of 3 Oct. 2008, in force since 1 Jan 2010 (AS 2009 3577; BBl 2006 9315).

<sup>261</sup> Inserted by No I 1 of the FA of 21 June 2019 on the Implementation of the Recommendations of the Global Forum on Transparency and the Exchange of Information for Tax Purposes, in force since 1 Nov. 2019 (AS 2019 3161; BBl 2019 279).



listed on a stock exchange or its bearer shares are organised as intermediated securities.<sup>262</sup>

<sup>2ter</sup> If all the equity securities are delisted, the company must within six months either convert the existing bearer shares into registered shares or organise them as intermediated securities.<sup>263</sup>

<sup>3</sup> The articles of association may provide that registered shares should or may subsequently be converted into bearer shares or vice versa.

<sup>4</sup> The nominal value of a share must be at least 1 centime.<sup>264</sup>

<sup>5</sup> The share certificate must be signed by at least one member of the board of directors<sup>265</sup>. The company may decide that even shares issued in large numbers must bear a handwritten signature.

### Art. 623

II. Splitting and consolidating shares

<sup>1</sup> By amending the articles of association, the general meeting may divide the shares into shares with a lower nominal value or consolidate them into shares with a higher nominal value, provided the share capital remains the same.

<sup>2</sup> The consolidation of shares requires the consent of the shareholder.

### Art. 624

III. Issue price

<sup>1</sup> The shares may be issued only at their nominal value or at a price that is higher. This does not apply to the issue of new shares to replace cancelled shares.

<sup>2-3</sup> ...<sup>266</sup>

### Art. 625<sup>267</sup>

D. Shareholders

<sup>1</sup> A company limited by shares may be established by one or more natural persons or legal entities or other commercial enterprises.

<sup>262</sup> Inserted by No I 1 of the FA of 21 June 2019 on the Implementation of the Recommendations of the Global Forum on Transparency and the Exchange of Information for Tax Purposes, in force since 1 Nov. 2019 (AS 2019 3161; BBl 2019 279).

<sup>263</sup> Inserted by No I 1 of the FA of 21 June 2019 on the Implementation of the Recommendations of the Global Forum on Transparency and the Exchange of Information for Tax Purposes, in force since 1 Nov. 2019 (AS 2019 3161; BBl 2019 279).

<sup>264</sup> Amended by No I of the FA of 15 Dec 2000, in force since 1 May 2001 (AS 2001 1047; BBl 2000 4337 No 2.2.1 5501).

<sup>265</sup> Term in accordance with No II 3 of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745). This amendment has been taken into account throughout the Code.

<sup>266</sup> Repealed by No I of the FA of 4 Oct. 1991, with effect from 1 Jan 1992 (AS 1992 733; BBl 1983 II 745).

<sup>267</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

**Art. 626<sup>268</sup>**

E. Articles of association  
I. Content prescribed by law

The articles of association must contain provisions concerning:

1. the business name and seat of the company;
2. the objects of the company;
3. the total share capital and the extent to which it is paid up;
4. the number, nominal value and types of shares;
5. the procedure for convening general meetings and the voting rights of shareholders;
6. the governing bodies for management and auditing;
7. the form of the company's external communications.

**Art. 627<sup>269</sup>**

II. Further provisions  
1. In general

In order to be binding, provisions on the following matters must be included in the articles of association:

1. amendment of the articles of association, where different from the statutory provisions;
2. the payment of shares of profits paid to board members;
3. the interest paid to shareholders until commencement of the company's operations;
4. limitation of the company's duration;
5. contractual penalties for failure to pay up share capital on time;
6. capital increases from authorised capital and contingent capital increases;
- 7.<sup>270</sup> ...
8. restrictions on the transferability of registered shares;
9. the preferential rights of individual share classes, participation certificates, dividend rights certificates and the granting of special privileges;
10. restrictions on the voting rights of shareholders and their rights to appoint representatives;
11. cases not envisaged in law in which the general meeting may make resolutions only by qualified majority;

<sup>268</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>269</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>270</sup> Repealed by No I 2 of the FA of 12 Dec 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, with effect from 1 July 2015 (AS 2015 1389; BBl 2014 605).

12. authority to delegate management responsibilities to individual members of the board of directors or to third parties;
13. the organisation and duties of the external auditors, where these go beyond those prescribed by law;
- 14.<sup>271</sup> the possibility of converting shares issued in a specific form into another form, together with an allocation of resultant costs, where this derogates from the regulations in the Uncertificated Securities Act of 3 October 2008<sup>272</sup>.

### Art. 628

2. Relating specifically to contributions in kind, acquisitions in kind, special privileges<sup>273</sup>

<sup>1</sup> Where a shareholder makes a contribution in kind, the articles of association must indicate its nature and value, the name of the contributor and the shares allocated to him.<sup>274</sup>

<sup>2</sup> Where the company acquires or intends to acquire tangible fixed assets from shareholders or close associates, the articles of association must indicate their nature, the name of the person providing them and the consideration given by the company.<sup>275</sup>

<sup>3</sup> Where special privileges are accorded to founder members or other persons on establishment of the company, the persons thus privileged must be named and each privilege precisely described and valued in the articles of association.

<sup>4</sup> After ten years the general meeting may annul provisions of the articles of association concerning contributions in kind or acquisitions in kind. Provisions on acquisitions in kind may also be annulled if the company makes a final decision not to make the acquisition in kind.<sup>276</sup>  
<sup>277</sup>

<sup>271</sup> Inserted by Annex No 3 of the Uncertificated Securities Act of 3 Oct. 2008, in force since 1 Jan 2010 (AS **2009** 3577; BBl **2006** 9315).

<sup>272</sup> SR **957.1**

<sup>273</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS **1992** 733; BBl **1983** II 745).

<sup>274</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS **1992** 733; BBl **1983** II 745).

<sup>275</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS **1992** 733; BBl **1983** II 745).

<sup>276</sup> Second sentence inserted by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS **2007** 4791; BBl **2002** 3148, **2004** 3969).

<sup>277</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS **1992** 733; BBl **1983** II 745).

**Art. 629**<sup>278</sup>

F. Establishment  
I. Deed of  
incorporation  
1. Content

<sup>1</sup> The company is established when the founder members declare by public deed that they are forming a company limited by shares, lay down the articles of association therein and appoint the governing bodies.

<sup>2</sup> In such deed of incorporation, the founder members subscribe for the shares and declare:

1. that all the shares are validly subscribed for;
2. that the promised capital contributions correspond to the full issue price;
3. that the requirements for payment of capital contributions prescribed by law and the articles of association are met.

**Art. 630**<sup>279</sup>

2. Share  
subscription

The share subscription is valid only where:

1. the number, nominal value, type, class and issue price of the shares are specified;
2. an unconditional commitment is given to pay up the capital corresponding to the issue price.

**Art. 631**<sup>280</sup>

II. Supporting  
documents

<sup>1</sup> In the deed of incorporation, the notary must cite each of the documents supporting the establishment of the company individually and confirm that they were presented to the founder members.

<sup>2</sup> The following documents must be appended to the deed of incorporation:

1. the articles of association;
2. the incorporation report;
3. the audit confirmation;
4. confirmation of the deposit of capital contributions;
5. the agreements on contributions in kind;
6. agreements on acquisitions in kind that are already available.

<sup>278</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>279</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>280</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

- Art. 632**<sup>281</sup>
- III. Capital contributions  
1. Minimum contribution
- 1 When the company is established, capital equivalent to at least 20 per cent of the nominal value of each share must be paid up.  
2 In all cases the capital contribution must be at least 50,000 francs.
- Art. 633**<sup>282</sup>
2. Performance of contributions  
a. Money contributions
- 1 Money contributions must be deposited with an institution subject to the Federal Act of 8 November 1934<sup>283</sup> on Banks and Savings Banks for the exclusive use of the company.  
2 The institution may release the money only when the company has been entered in the commercial register.
- Art. 634**<sup>284</sup>
- b. Contributions in kind
- Contributions in kind satisfy the contribution requirement only where:
1. made on the basis of an agreement to make a contribution in kind done in writing as a public deed;
  2. on being entered in the commercial register, the company immediately acquires ownership and the right to dispose of them or an unconditional right to enter them in the land register;
  3. an incorporation report with audit confirmation is available.
- Art. 634a**<sup>285</sup>
- c. Subsequent contribution
- 1 The board of directors determines the rules governing subsequent contributions in respect of shares that are not fully paid-up.  
2 Such subsequent contributions may be made in money or in kind or by means of set-off.
- Art. 635**<sup>286</sup>
3. Verification of capital contributions  
a. Statutory report
- The founder members draw up a written statutory report in which they give account of:
- 281 Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).  
282 Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).  
283 SR 952.0  
284 Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).  
285 Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).  
286 Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

1. the nature and condition of contributions in kind or acquisitions in kind and the appropriateness of their valuation;
2. the existence of debts and whether such debts may be set off;
3. the reasons for and appropriateness of special privileges accorded to founder members or other persons.

**Art. 635<sup>a</sup>**<sup>287</sup>

b. Audit confirmation

A licensed auditor verifies the incorporation report and confirms in writing that it is complete and accurate.

**Art. 636–639**<sup>288</sup>

**Art. 640**<sup>289</sup>

G. Entry in the commercial register

The company is entered in the commercial register of the place at which it has its seat.

I. Company

**Art. 641**<sup>290</sup>

II. Branch offices

Branch offices are entered in the commercial register for the place where they are located.

**Art. 642**<sup>291</sup>

III. Contributions and acquisitions in kind, special privileges

<sup>1</sup> The subject matter of contributions in kind and the shares issued in exchange, the subject matter of acquisitions in kind and the consideration provided by the company, and the nature and value of special privileges must be entered in the commercial register.

<sup>287</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992

(AS 1992 733, BBl 1983 II 745).

<sup>288</sup> Repealed by No I of the FA of 4 Oct. 1991, with effect from 1 July 1992

(AS 1992 733; BBl 1983 II 745).

<sup>289</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008

(AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>290</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008

(AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>291</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008

(AS 2007 4791; BBl 2002 3148, 2004 3969).

**Art. 643**

H. Acquisition of legal personality  
I. Timing; entry conditions not satisfied<sup>292</sup>

<sup>1</sup> The company acquires legal personality only through entry in the commercial register.

<sup>2</sup> It acquires legal personality thereby even if the conditions for such entry were in fact not satisfied.

<sup>3</sup> However, where the law or the articles of association were contravened in the establishment of the company such that the interests of creditors or shareholders were substantially jeopardised or harmed, at the request of those creditors or shareholders the court may order that the company be dissolved.<sup>293</sup>

<sup>4</sup> The foregoing right of action becomes time-barred if action is not brought within three months of publication in the Swiss Official Gazette of Commerce.

**Art. 644**

II. Shares issued before entry

<sup>1</sup> Shares issued before the company is entered in the commercial register are void; however, the obligations arising from the share subscription remain effective.

<sup>2</sup> A person issuing shares prior to such entry is liable for all resultant losses.

**Art. 645**

III. Obligations contracted prior to entry

<sup>1</sup> A person acting in the name of the company prior to entry in the commercial register is liable personally and jointly and severally for his actions.

<sup>2</sup> Where such obligations were incurred expressly in the name of the company to be established and are assumed by the latter within three months of its entry in the commercial register, the persons who contracted them are relieved of liability and only the company is liable.

<sup>292</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>293</sup> Second sentence repealed by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), with effect from 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

**Art. 646**<sup>294</sup>**Art. 647**<sup>295</sup>

J. Amending the articles of association

<sup>1</sup> Any resolution adopted by the general meeting or the board of directors concerning an amendment of the articles of association must be done as a public deed and entered in the commercial register.

**Art. 648–649**<sup>296</sup>**Art. 650**<sup>297</sup>

K. Increase in the share capital  
I. Ordinary and authorised capital increase  
1. Ordinary capital increase

<sup>1</sup> A decision to increase the share capital is taken by means of resolution passed by the general meeting; it must be carried out by the board of directors within three months.

<sup>2</sup> The resolution of the general meeting must be done as a public deed and specify:

1. the full nominal value by which the share capital is to be increased and the amount of contributions to be paid up;
2. the number, nominal value and type of shares and the preferential rights attaching to specific share classes;
3. the issue price or the authority conferred on the board of directors to set the price, and the date on which the dividend entitlement commences;
4. the type of capital contributions to be made and, in the case of contributions in kind, their nature and value, the name of the contributor and the shares due to him in exchange;
5. in the case of acquisitions in kind, the nature of such assets, the name of the contributor and the consideration provided by the company;
6. the nature and value of special privileges and the names of the beneficiaries;
7. any restriction on the transferability of new registered shares;

<sup>294</sup> Repealed by No I of the FA of 4 Oct. 1991, with effect from 1 July 1992 (AS 1992 733; BBI 1983 II 745).

<sup>295</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBI 2002 3148, 2004 3969).

<sup>296</sup> Repealed by No I of the FA of 4 Oct. 1991, with effect from 1 July 1992 (AS 1992 733; BBI 1983 II 745).

<sup>297</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBI 1983 II 745).



8. any restrictions on or cancellation of subscription rights and the allocation of subscription rights that have not been exercised or have been withdrawn;
9. the conditions to be met when exercising contractual subscription rights.

<sup>3</sup> Where the capital increase is not entered in the commercial register within three months, the resolution of the general meeting lapses.

**Art. 651**<sup>298</sup>

2. Authorised capital increase  
a. Basis in articles of association

<sup>1</sup> By amending the articles of association, the general meeting may authorise the board of directors to increase the share capital within a period of no more than two years.

<sup>2</sup> The articles of association lay down the nominal amount by which the board of directors may increase the share capital. Such authorised capital may not exceed one-half of the existing share capital.

<sup>3</sup> Further, the articles of association stipulate the same information as required for an ordinary capital increase, with the exception of the specifications concerning the issue amount, the type of contributions, acquisitions in kind and the date on which the dividend entitlement commences.

<sup>4</sup> Within the limits of its authority, the board of directors may carry out share capital increases. In so doing it enacts the necessary provisions where these are not already laid down in the resolution of the general meeting.

<sup>5</sup> The foregoing paragraphs are subject to the regulations of the Banking Act of 8 November 1934<sup>299</sup> on reserve capital.<sup>300</sup>

**Art. 651a**<sup>301</sup>

b. Amendment of the articles of association

<sup>1</sup> Following every capital increase, the board of directors reduces the nominal amount of the authorised capital in the articles of association accordingly.

<sup>2</sup> On expiry of the time limit set for execution of the capital increase, the provision concerning the authorised capital increase is deleted from the articles of association by resolution of the board of directors.

<sup>298</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>299</sup> SR 952.0

<sup>300</sup> Inserted by Annex No I of the FA of 30 Sept. 2011 (Securing Stability in the Financial Sector), in force since 1 March 2012 (AS 2012 811; BBl 2011 4717).

<sup>301</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

3. Common provisions  
a. Share subscription

**Art. 652**<sup>302</sup>

<sup>1</sup> The shares are subscribed in a special document (subscription form) in accordance with the provisions governing the establishment of the company.

<sup>2</sup> The subscription form must make reference to the resolution of the general meeting concerning the share capital increase or the authorisation of such increase and to the resolution of the board of directors concerning the share capital increase. Where the law requires an issue prospectus, the subscription form also refers to this.

<sup>3</sup> Where the subscription form does not indicate a time limit, it ceases to be binding three months after it was signed.

b. Issue prospectus

**Art. 652a**<sup>303</sup>

<sup>1</sup> Where new shares are publicly offered for subscription, the company publishes an issue prospectus containing information on:

1. the content of the existing entry in the commercial register, with the exception of details relating to the persons authorised to represent the company;
2. the existing amount and composition of the share capital, including the number, nominal value and type of shares and the preferential rights attaching to specific share classes;
3. the provisions of the articles of association relating to any authorised or contingent capital increase;
4. the number of dividend rights certificates and the nature of the associated rights;
5. the most recent annual accounts and consolidated accounts with audit report and, if more than six months have elapsed since the accounting cut-off date, the interim accounts;
6. the dividends distributed in the last five years or since the company was established;
7. the resolution concerning the issue of new shares.

<sup>2</sup> A public offer is any invitation to subscribe that is not addressed solely to a limited number of persons.

<sup>3</sup> In the case of companies that do not have an auditor, the board of directors must arrange for an audit report to be prepared by a licensed

<sup>302</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>303</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

auditor and provide information on the result of the audit in the issue prospectus.<sup>304</sup>

**Art. 652b**<sup>305</sup>

c. Subscription right

<sup>1</sup> Every shareholder is entitled to the proportion of the newly issued shares that corresponds to his existing participation.

<sup>2</sup> A resolution by the general meeting to increase the share capital may cancel this subscription right only for good cause. In particular, the takeover of companies, parts of companies or equity interests and employee share ownership are deemed to be good cause. The cancellation of the subscription right must not result in any improper advantage or disadvantage to the parties involved.

<sup>3</sup> Where the company has granted a shareholder the right to subscribe to shares, it may not bar him from exercising such right on the basis of a restriction on the transferability of registered shares laid down in the articles of association.

**Art. 652c**<sup>306</sup>

d. Making capital contributions

Unless the law provides otherwise, capital contributions must be made in accordance with the provisions governing the establishment of the company.

**Art. 652d**<sup>307</sup>

e. Increase from equity capital

<sup>1</sup> The share capital may also be increased through conversion of freely disposable equity capital.

<sup>2</sup> The equity capital used to meet the amount of the increase is shown in the annual accounts as approved by the shareholders and in the audit report of a licensed auditor. If more than six months have elapsed since the accounting cut-off date, audited interim accounts are required.<sup>308</sup>

<sup>304</sup> Inserted by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>305</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>306</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>307</sup> Inserted by No I 3 of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>308</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

**Art. 652<sup>e309</sup>**

f. Capital increase report

The board of directors draws up a written report in which it gives account of:

1. the nature and condition of contributions in kind or acquisitions in kind and the appropriateness of their valuation;
2. the existence of debts and whether such debts may be set off;
3. the free disposability of the equity capital thus converted;
4. compliance with the resolution of the general meeting, in particular concerning restrictions on or cancellation of subscription rights and the allocation of subscription rights that have not been exercised or have been withdrawn;
5. the reasons for and appropriateness of special privileges accorded to specific shareholders or other persons.

**Art. 652<sup>β10</sup>**

g. Audit confirmation

<sup>1</sup> A licensed auditor verifies the capital increase report and confirms in writing that it is complete and accurate.<sup>311</sup>

<sup>2</sup> No such audit confirmation is required where the capital contribution for the new share capital is made in money, the share capital increase is not for the purpose of funding an acquisition in kind and subscription rights are not restricted or cancelled.

**Art. 652<sup>g312</sup>**

h. Amendment of articles of association and statements required

<sup>1</sup> Once the capital increase report and, where required, the audit confirmation are available, the board of directors amends the articles of association and declares:

1. that all shares are validly subscribed for;
2. that the promised capital contributions correspond to the full issue price;
3. that the contributions have been made in accordance with the requirements prescribed by law, the articles of association and the resolution of the general meeting.

<sup>309</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>310</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>311</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>312</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>2</sup> The resolution and declarations must be done as public deeds. The notary must cite each of the documents supporting the capital increase individually and confirm that they were presented to the board of directors.

<sup>3</sup> The amended articles of association, capital increase report, audit confirmation, agreements on contributions in kind and available agreements on acquisitions in kind must be enclosed with the public deed.

#### **Art. 652h**<sup>313</sup>

i. Entry in the commercial register; nullity of previously issued shares

<sup>1</sup> The board of directors notifies the amendment of the articles of association and its declarations for entry in the commercial register.

<sup>2</sup> It must submit:

1. the public deeds concerning the resolutions of the general meeting and of the board of directors with their enclosures;
2. an authenticated copy of the amended articles of association.

<sup>3</sup> Shares issued prior to entry of the capital increase are void; the obligations arising from the share subscription remain effective.

#### **Art. 653**<sup>314</sup>

II. Contingent capital increase  
1. General principle

<sup>1</sup> The general meeting may resolve to make a contingent capital increase by stipulating in the articles of association that creditors of new bonds and similar debt instruments issued by the company or its group companies and employees will be granted rights to subscribe to new shares (conversion or option rights).

<sup>2</sup> The share capital automatically increases whenever and to the extent that such conversion or option rights are exercised and the contribution obligations are discharged by set-off or payment.

<sup>5</sup> The foregoing paragraphs are subject to the regulations of the Banking Act of 8 November 1934<sup>315</sup> on reserve capital.<sup>316</sup>

#### **Art. 653a**<sup>317</sup>

2. Restrictions

<sup>313</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>314</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>315</sup> SR 952.0

<sup>316</sup> Inserted by Annex No I of the FA of 30 Sept. 2011 (Securing Stability in the Financial Sector), in force since 1 March 2012 (AS 2012 811; BBl 2011 4717).

<sup>317</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>1</sup> The nominal amount by which the share capital may be increased in this contingent manner must not exceed one-half of the existing share capital.

<sup>2</sup> The capital contribution must be at least equal to the nominal value.

**Art. 653b**<sup>318</sup>

3. Basis in articles of association

<sup>1</sup> The articles of association must stipulate:

1. the nominal amount of the contingent capital increase;
2. the number, nominal value and type of shares;
3. the beneficiaries of conversion or option rights;
4. the cancellation of the subscription rights of existing shareholders;
5. preferential rights attached to specific share classes;
6. the restrictions on the transferability of newly registered shares.

<sup>2</sup> Where the bonds or similar debt instruments to which the conversion or option rights attach are not offered first to the shareholders for subscription, the articles of association must also stipulate:

1. the conditions on which the conversion or option rights may be exercised;
2. the basis on which the issue amount is to be calculated.

<sup>3</sup> Conversion or option rights granted before the provision of the articles of association concerning the contingent capital increase has been entered in the commercial register are void.

**Art. 653c**<sup>319</sup>

4. Protection of shareholders

<sup>1</sup> Where bonds or similar debt instruments to which conversion or option rights attach are to be issued as part of a contingent capital increase, they must be offered first to the shareholders for subscription in proportion to the shareholders' existing participations.

<sup>2</sup> This priority subscription right may be restricted or cancelled for good cause.

<sup>3</sup> Any cancellation of subscription rights required in order to carry out a contingent capital increase and any restriction or cancellation of priority subscription rights must not result in any improper advantage or disadvantage to the parties involved.

<sup>318</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>319</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

**Art. 653d**<sup>320</sup>

5. Protection of beneficiaries of conversion or option rights

<sup>1</sup> A creditor or employee who holds a conversion or option right to acquire registered shares may not be barred from exercising that right on account of restrictions on the transferability of registered shares, unless this possibility is reserved in the articles of association and the issue prospectus.

<sup>2</sup> Conversion or option rights may be adversely affected by a share capital increase, by the issue of new conversion or option rights, or in some other manner only if the conversion price is lowered or the beneficiaries are granted some other form of adequate compensation or if the shareholders suffer the same adverse effect.

**Art. 653e**<sup>321</sup>

6. Execution of capital increase  
a. Exercise of rights; capital contribution

<sup>1</sup> Conversion or option rights are exercised by making a written declaration that refers to the provision of the articles of association concerning the contingent capital increase; where the law requires an issue prospectus, the declaration must refer to it.

<sup>2</sup> A capital contribution in money or by set-off must be made through a banking institution subject to the Banking Act of 8 November 1934<sup>322</sup>.

<sup>3</sup> The shareholder's rights are established when the capital contribution is made.

**Art. 653f**<sup>323</sup>

b. Audit confirmation

<sup>1</sup> At the end of each financial year, or earlier at the request of the board of directors, a licensed audit expert verifies whether the issue of the new shares was in conformity with the law, the articles of association and, where required, the issue prospectus.<sup>324</sup>

<sup>2</sup> The auditor confirms this in writing.

**Art. 653g**<sup>325</sup>

c. Amendment of the articles of association

<sup>320</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>321</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>322</sup> SR 952.0

<sup>323</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>324</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>325</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>1</sup> On receipt of the audit confirmation, the board of directors draws up a public deed stating the number, nominal value and type of the newly issued shares, the preferential rights attaching to specific share classes and the status of the share capital as at the end of the financial year or the date of the audit. It amends the articles of association as necessary.

<sup>2</sup> In the public deed, the notary states that the audit confirmation contains the required information.

**Art. 653<sup>h</sup>**<sup>326</sup>

d. Entry in the commercial register

The board of directors applies for the amendment to the articles of association to be entered in the commercial register within three months of the end of the financial year and files the public deed and the audit confirmation.

**Art. 653<sup>i</sup>**<sup>327</sup>

7. Deletion

<sup>1</sup> Where the conversion or option rights are extinct and this is confirmed in a written report drawn up by a licensed audit expert, the board of directors annuls the provisions of the articles of association concerning the contingent capital increase.

<sup>2</sup> In such public deed the notary states that the auditors' report contains the required information.

**Art. 654**

III. Preference shares

1. Requirements<sup>328</sup>

<sup>1</sup> Pursuant to or by amendment of the articles of association, the general meeting may resolve that preference shares be issued or that existing shares be converted into preference shares.

<sup>2</sup> Where a company has issued preference shares, further preference shares conferring preferential rights over the existing preference shares may be issued only with the consent of both a special meeting of the adversely affected holders of the existing preference shares and of a general meeting of all shareholders, unless otherwise provided in the articles of association.

<sup>3</sup> The same applies to any proposal to vary or cancel preferential rights attached to the preference shares that were conferred pursuant to the articles of association.

<sup>326</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>327</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745). Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969)

<sup>328</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).



**Art. 655**<sup>329</sup>**Art. 656**

2. Status of preference shares<sup>330</sup>

1 Preference shares enjoy the preferential rights vis-à-vis ordinary shares that are expressly conferred on them by the original articles of association or by amendment thereof. In other respects they are of equal status with the ordinary shares.

2 In particular, preferential rights may relate to the dividend, with or without rights to cumulative dividends, to the share in the proceeds of liquidation and to subscription rights in the event that new shares are issued.

**Art. 656a**<sup>331</sup>

L. Participation certificates  
I. Definition; applicable provisions

1 The articles of association may provide for participation capital divided into specific amounts (participation certificates). These participation certificates are issued against a capital contribution, have a nominal value and do not confer voting rights.

2 Unless otherwise provided by law, the provisions governing share capital, shares and shareholders also apply to the participation capital, participation certificates and participation certificate holders.

3 The participation certificates must be designated as such.

**Art. 656b**<sup>332</sup>

II. Participation and share capital

1 Participation capital must not exceed an amount equal to double the share capital.

2 The provisions governing minimum capital and the minimum total contribution do not apply.

3 For the purposes of the provisions governing restrictions on acquisition of a company's own shares, the general reserve, the instigation of a special audit against the will of the general meeting and duty of notification in the event of capital loss, participation capital is deemed to be part of the share capital.

4 An authorised or contingent increase of the share and participation capital must not in total exceed one-half of the combined existing share and participation capital.

<sup>329</sup> Repealed by No I of the FA of 4 Oct. 1991, with effect from 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>330</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>331</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>332</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>5</sup> Participation capital may be created by means of an authorised or contingent capital increase.

**Art. 656c**<sup>333</sup>

III. Legal position of participation certificate holders

1. In general

<sup>1</sup> Participation certificate holders have no voting rights and, unless otherwise provided by the articles of association, none of the rights associated therewith.

<sup>2</sup> Rights associated with voting rights are the right to convene a general meeting, the right to attend such a meeting, the right to information, the right of inspection and the right to table motions.

<sup>3</sup> Where the articles of association do not grant a participation certificate holder the right to information, the right of inspection or the right to instigate a special audit (Art. 697a et seq.), he may submit a written request for information, access to documents or the instigation of a special audit to the general meeting.

**Art. 656d**<sup>334</sup>

2. Notice and resolutions of general meetings

<sup>1</sup> Whenever a general meeting is convened, notice must be given to participation certificate holders together with the agenda items and the motions tabled.

<sup>2</sup> Every resolution passed by the general meeting must be made available without delay at the seat of the company and in its registered branch offices for inspection by participation certificate holders. Their attention must be drawn to this in the notice relating to the meeting.

**Art. 656e**<sup>335</sup>

3. Representation on the board of directors

The articles of association may grant participation certificate holders the right to have a representative on the board of directors.

**Art. 656f**<sup>336</sup>

4. Pecuniary rights

a. In general

<sup>1</sup> The articles of association must not place participation certificate holders at a disadvantage as against shareholders in respect of the distribution of the disposable profit and the proceeds of liquidation and subscription to new shares.

<sup>333</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>334</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>335</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>336</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>2</sup> Where several share classes exist, the participation certificates must be treated as at least equivalent to the lowest ranking share class.

<sup>3</sup> Amendments to the articles of association and other resolutions of the general meeting that adversely affect the position of participation certificate holders are permitted only if they also adversely affect the position of the shareholders to whom the participation certificate holders are equal in status to the same degree.

<sup>4</sup> Unless otherwise provided by the articles of association, the preferential rights of participation certificate holders and their rights to participate in the company's governance as laid down by the articles of association may be restricted or cancelled only with the consent of a special meeting of the participation certificate holders concerned and of the general meeting of all shareholders.

#### **Art. 656g**<sup>337</sup>

b. Subscription rights

<sup>1</sup> Where participation capital is created, the shareholders have a subscription right as for the issue of new shares.

<sup>2</sup> The articles of association may provide that shareholders may subscribe only to shares and participation certificate holders only to participation certificates where the share capital and the participation capital are to be increased simultaneously in the same proportions.

<sup>3</sup> Where only the participation capital or only the share capital is to be increased or one is to be increased by a greater proportion, the subscription rights must be allocated so that shareholders and participation certificate holders may retain their relative participations in the overall capital.

#### **Art. 657**<sup>338</sup>

M. Dividend rights certificates

<sup>1</sup> The articles of association may provide for the creation of dividend rights certificates in favour of persons linked with the company by previous capital participation or by virtue of being shareholders, creditors, employees or similar. The articles of association must indicate the number of dividend rights certificates issued and the nature of the associated rights.

<sup>2</sup> Such dividend rights certificates entitle their holders only to a share in the disposable profit or the proceeds of liquidation or to subscribe to new shares.

<sup>337</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>338</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>3</sup> The dividend rights certificate must not have a nominal value; it must not be called a participation certificate or issued in exchange for a capital contribution stated as an asset in the balance sheet.

<sup>4</sup> By operation of law, the beneficiaries under dividend rights certificates form a community to which the provisions governing the community of bond creditors apply *mutatis mutandis*. However, a decision to waive some or all rights under dividend rights certificates is binding only if taken by the holders of a majority of all such certificates in circulation.

<sup>5</sup> Dividend rights certificates may be created in favour of the company's founder members only by means of the original articles of association.

**Art. 658**<sup>339</sup>

**Art. 659**<sup>340</sup>

N. Own shares  
I. Restrictions on acquisition

<sup>1</sup> The company may acquire its own shares only where freely disposable equity capital is available in the required amount and the combined nominal value of all such shares does not exceed 10 per cent of the share capital.

<sup>2</sup> Where registered shares are acquired in connection with a restriction on transferability, the foregoing upper limit is 20 per cent. The company's own shares that exceed the threshold of 10 per cent of the share capital must be sold or cancelled by means of a capital reduction within two years.

**Art. 659a**<sup>341</sup>

II. Consequences of acquisition

<sup>1</sup> The voting rights on the company's own shares and the rights associated therewith are suspended.

<sup>2</sup> The company must set aside an amount equivalent to the cost of acquiring its own shares as a separate reserve.

**Art. 659b**<sup>342</sup>

III. Acquisition by subsidiaries

<sup>1</sup> Where a company holds a majority interest in a subsidiary, any acquisition of its shares by such subsidiary is subject to the same

<sup>339</sup> Repealed by No I of the FA of 4 Oct. 1991, with effect 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>340</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>341</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>342</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

restrictions and has the same consequences as the acquisition of its own shares.

<sup>2</sup> Where a company acquires a majority interest in another company which holds shares of the acquirer, these shares are deemed the acquirer's own shares.

<sup>3</sup> The obligation to form a reserve rests with the company holding the majority interest.

## Section Two: Rights and Obligations of Shareholders

### Art. 660<sup>343</sup>

A. Entitlement to a share of the profits and proceeds of liquidation  
I. In general

<sup>1</sup> Every shareholder is entitled to a pro rata share of the disposable profit to the extent that the distribution of such profit among the shareholders is provided for by law or the articles of association.

<sup>2</sup> On dissolution of the company, the shareholder is entitled to a pro rata share of the liquidation proceeds, unless otherwise provided by those articles of association that relate to the allocation of the assets of the dissolved company.

<sup>3</sup> The preferential rights attaching to specific share classes stipulated in the articles of association are reserved.

### Art. 661

II. Calculation method

Unless the articles of association provide otherwise, the share of the profits and the proceeds of liquidation are calculated in proportion to the amounts paid up on the share capital.

<sup>343</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

**Art. 662**<sup>344</sup>

**Art. 662a**<sup>345</sup>

**Art. 663**<sup>346</sup>

**Art. 663a** and **663b**<sup>347</sup>

**Art. 663b**<sup>bis348</sup>

B. <sup>349</sup>Annual report  
I. Additional information on companies with listed shares  
1. Remuneration

<sup>1</sup> Companies whose shares are listed on a stock exchange must provide the following additional information in the notes to the balance sheet:

1. all remuneration distributed directly or indirectly to current members of the board of directors;
2. all remuneration distributed directly or indirectly to persons entrusted by the board of directors with all or some of the company's management activities (executive board);
3. all remuneration distributed directly or indirectly to current members of the board of advisors;
4. all remuneration distributed directly or indirectly to former members of the board of directors, executive board and board of advisors where such remuneration relates to past activities as a governing officer of the company or is not customary market practice;
5. all remuneration distributed directly or indirectly to close associates of the persons specified in numbers 1–4 where such remuneration is not customary market practice.

<sup>2</sup> In particular, the following are deemed to be remuneration:

1. fees, salaries, bonuses and account credits;

<sup>344</sup> Repealed by No I 1 of the FA of 23 Dec 2011 (Financial Reporting Law), with effect from 1 Jan 2013 (AS **2012** 6679; BBl **2008** 1589).

<sup>345</sup> Inserted by No I of the FA of 4 Oct. 1991 (AS **1992** 733; BBl **1983** II 745). Repealed by No I 1 of the FA of 23 Dec 2011 (Financial Reporting Law), with effect from 1 Jan 2013 (AS **2012** 6679; BBl **2008** 1589).

<sup>346</sup> Repealed by No I 1 of the FA of 23 Dec 2011 (Financial Reporting Law), with effect from 1 Jan 2013 (AS **2012** 6679; BBl **2008** 1589).

<sup>347</sup> Inserted by No I of the FA of 4 Oct. 1991 (AS **1992** 733; BBl **1983** II 745). Repealed by No I 1 of the FA of 23 Dec 2011 (Financial Reporting Law), with effect from 1 Jan 2013 (AS **2012** 6679; BBl **2008** 1589).

<sup>348</sup> Inserted by No I of the FA of 7 Oct. 2005 (Transparency in relation to remuneration of members of the board of directors and the executive board), in force since 1 Jan 2007 (AS **2006** 2629; BBl **2004** 4471).

<sup>349</sup> Amended by No I 1 of the FA of 23 Dec 2011 (Financial Reporting Law), in force since 1 Jan 2013 (AS **2012** 6679; BBl **2008** 1589).

2. shares of profits paid to board members and commissions, participation in turnover and other forms of participation in the business results;
  3. benefits in kind;
  4. allocations of shares and conversion and option rights;
  5. severance payments;
  6. guarantee and pledge commitments in favour of third parties and other collateral commitments;
  7. waivers of claims;
  8. expenditures giving rise to or increasing occupational benefit entitlements;
  9. all payments and benefits for additional work.
- <sup>3</sup> The following must also be stated in the notes to the balance sheet:
1. all loans and credit facilities extended to the current members of the board of directors, executive board and board of advisors that are still outstanding;
  2. loans and credit facilities to former members of the board of directors, executive board and board of advisors that were extended on conditions other than the customary market conditions and are still outstanding;
  3. all loans and credit facilities to close associates of the persons specified in numbers 1 and 2 that were extended on conditions other than the customary market conditions and are still outstanding.
- <sup>4</sup> The information provided on remuneration and credit must include:
1. the amount for the board of directors as a whole and the amount for each member, specifying the name and function of the member concerned;
  2. the amount for the executive board as a whole and the highest amount for each member, specifying the name and function of the member concerned;
  3. the total amount for the board of advisors as a whole and the amount for each member, specifying the name and function of the member concerned.
- <sup>5</sup> Remuneration and credits to close associates must be shown separately. The names of such associates need not be given. In other respects the provisions governing information on remuneration and credit to members of the board of directors, executive board and board of advisors apply *mutatis mutandis*.

2. Sharehold-  
ings<sup>351</sup>

**Art. 663c**<sup>350</sup>

<sup>1</sup> Companies whose shares<sup>352</sup> are listed on a stock exchange must specify the significant shareholders and their shareholdings in the notes to the balance sheet, where these are known or ought to be known.

<sup>2</sup> Significant shareholders are defined as shareholders and groups of shareholders linked through voting rights who own more than 5 per cent of all voting rights. Where the articles of association provide for a lower percentage threshold for registered shares (Art. 685d para. 1), that threshold applies for purposes of the duty of disclosure.

<sup>3</sup> Also to be indicated are the shareholdings in the company and the conversion and option rights held by each current member of the board of directors, executive board and board of advisors including those held by their close associates, specifying the name and function of the member concerned.<sup>353</sup>

**Art. 663d–663h**<sup>354</sup>

**Art. 664 and 665**<sup>355</sup>

**Art. 665a**<sup>356</sup>

**Art. 666 and 667**<sup>357</sup>

**Art. 668**<sup>358</sup>

<sup>350</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992

(AS 1992 733; BBl 1983 II 745).

<sup>351</sup> Amended by No I I of the FA of 23 Dec 2011 (Financial Reporting Law), in force since 1 Jan 2013 (AS 2012 6679; BBl 2008 1589).

<sup>352</sup> Revised by the Federal Assembly Drafting Committee (Art. 33 ParlPA; AS 1974 1051).

<sup>353</sup> Inserted by No I of the FA of 7 Oct. 2005 (Transparency in relation to remuneration of members of the board of directors and the executive board), in force since 1 Jan 2007 (AS 2006 2629; BBl 2004 4471).

<sup>354</sup> Inserted by No I of the FA of 4 Oct. 1991 (AS 1992 733; BBl 1983 II 745). Repealed by No I I of the FA of 23 Dec 2011 (Financial Reporting Law), with effect from 1 Jan 2013 (AS 2012 6679; BBl 2008 1589).

<sup>355</sup> Repealed by No I I of the FA of 23 Dec 2011 (Financial Reporting Law), with effect from 1 Jan 2013 (AS 2012 6679; BBl 2008 1589).

<sup>356</sup> Inserted by No I of the FA of 4 Oct. 1991 (AS 1992 733; BBl 1983 II 745). Repealed by No I I of the FA of 23 Dec 2011 (Financial Reporting Law), with effect from 1 Jan 2013 (AS 2012 6679; BBl 2008 1589).

<sup>357</sup> Repealed by No I I of the FA of 23 Dec 2011 (Financial Reporting Law), with effect from 1 Jan 2013 (AS 2012 6679; BBl 2008 1589).

<sup>358</sup> Repealed by No I of the FA of 4 Oct. 1991, with effect from 1 July 1992 (AS 1992 733; BBl 1983 II 745).



**Art. 669**<sup>359</sup>**Art. 670**<sup>360</sup>II. Valuation,  
revaluation<sup>361</sup>

<sup>1</sup> Where as a result of a net loss for the year the company's capital cover falls below one-half of the share capital and the legal reserves, in order to rectify the negative net worth, the company may revalue land, buildings or equity participations whose real value has risen above their value stated at cost up to a maximum equal to one-half of the share capital and the legal reserves. The revaluation amount is stated separately as a revaluation reserve.

<sup>2</sup> The revaluation is permitted only where a licensed auditor issues written confirmation for the attention of the general meeting that the revaluation complies with the relevant statutory provisions.<sup>362</sup>

**Art. 671**<sup>363</sup>C. Reserves  
I. Legal reserves  
1. General  
reserve

<sup>1</sup> Five per cent of the annual profit must be allocated to the general reserve until this equals 20 per cent of the paid-up share capital.

<sup>2</sup> Even after it has reached the statutory level, the following must be allocated to the general reserve:

1. any share issue proceeds in excess of the nominal value remaining after the issue costs have been met, unless used to fund write-downs or for staff welfare purposes;
2. any amount remaining from sums paid in on forfeited shares after any shortfall on the shares issued in return has been met;
3. ten per cent of the amounts distributed as the share in the profit above and beyond payment of a dividend of 5 per cent.

<sup>3</sup> To the extent it does not exceed one-half of the share capital, the general reserve may be used only to cover losses or for measures designed to sustain the company through difficult times, to prevent unemployment or to mitigate its consequences.

<sup>359</sup> Repealed by No I 1 of the FA of 23 Dec 2011 (Financial Reporting Law), with effect from 1 Jan 2013 (AS 2012 6679; BBI 2008 1589).

<sup>360</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBI 1983 II 745).

<sup>361</sup> Amended by No I 1 of the FA of 23 Dec 2011 (Financial Reporting Law), in force since 1 Jan 2013 (AS 2012 6679; BBI 2008 1589).

<sup>362</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBI 2002 3148, 2004 3969).

<sup>363</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBI 1983 II 745).

<sup>4</sup> The provisions in para. 2 number 3 and paragraph 3 do not apply to companies whose primary purpose is to hold equity participations in other companies (holding companies).

<sup>5</sup> ...<sup>364</sup>

<sup>6</sup> ...<sup>365</sup>

**Art. 671a**<sup>366</sup>

2. Reserve for own shares

The reserve for the company's own shares may be written back in the amount of any sold or destroyed shares valued at cost.

**Art. 671b**<sup>367</sup>

3. Revaluation reserve

The revaluation reserve may be written back only by means of conversion into share capital, fresh write-down or disposal of the revalued assets.

**Art. 672**<sup>368</sup>

II. Reserves pursuant to the articles of association  
1. In general

<sup>1</sup> The articles of association may stipulate that amounts greater than 5 per cent of the annual profit are to be allocated to reserves and that the reserve must contain more than the 20 per cent of paid-up share capital required by law.

<sup>2</sup> They may provide for the formation of further reserves and specify the purpose and use thereof.

**Art. 673**<sup>369</sup>

2. For staff welfare purposes

In particular, the articles of association may provide for reserves earmarked for the foundation and funding of welfare schemes for the company's employees.

<sup>364</sup> Repealed by No II 2 of the FA of 20 March 2009 on Rail Reform 2, with effect from 1 Jan 2010 (AS **2009** 5597 5629; BBl **2005** 2415, **2007** 2681).

<sup>365</sup> Repealed by Annex No II 1 of the Insurance Oversight Act of 17 Dec 2004, with effect from 1 Jan 2006 (AS **2005** 5269; BBl **2003** 3789).

<sup>366</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS **1992** 733; BBl **1983** II 745).

<sup>367</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS **1992** 733; BBl **1983** II 745).

<sup>368</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS **1992** 733; BBl **1983** II 745).

<sup>369</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS **1992** 733; BBl **1983** II 745).

**Art. 674**<sup>370</sup>

III. Ratio of the share in the profit to the reserves

<sup>1</sup> The dividend may be determined only after the allocations to reserves required by the law and the articles of association have been deducted.

<sup>2</sup> The general meeting may resolve on the formation of reserves which are not provided for by law or the articles of association or which go beyond the requirements thereof, provided that

1. this is necessary for replacement purposes;
2. with a view to the long-term prosperity of the company or the desirability of a stable dividend, such reserves are justified and in the best interests of the shareholders.

<sup>3</sup> Similarly, the general meeting may resolve on the allocation of disposable profit to form reserves for the foundation and funding of welfare schemes for the company's employees or for other welfare purposes even where such reserves are not provided for in the articles of association.

**Art. 675**

D. Dividends, interest before commencement of operations and shares of profits paid to board members

I. Dividends

<sup>1</sup> No interest may be paid on the share capital.

<sup>2</sup> Dividends may be paid only from the disposable profit and from reserves formed for this purpose.<sup>371</sup>

**Art. 676**

II. Interest before commencement of operations

<sup>1</sup> The shareholders may be paid interest out of the investment account for the time required to prepare and build up the company prior to commencement of full operations. The articles of association must stipulate the latest time by which payment of such interest must cease.

<sup>2</sup> If the company is expanded by means of an issue of new shares, the resolution concerning the capital increase may provide for a specified amount of interest to be paid on the new shares from the investment account until a precisely defined date, which must be no later than the date on which the new operational facility commences operations.

<sup>370</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>371</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

**Art. 677**<sup>372</sup>

III. Shares of profits paid to board members

Shares of the profit may be paid to members of the board of directors only out of the disposable profit and only after the allocation to the legal reserve has been made and a dividend of 5 per cent or a higher percentage laid down by the articles of association has been paid to the shareholders.

**Art. 678**<sup>373</sup>

E. Return of benefits  
I. In general

<sup>1</sup> Shareholders and members of the board of directors and their close associates who have unduly and in bad faith received dividends, shares of profits paid to board members, other shares of profits or interest before commencement of operations are obliged to return such benefits.

<sup>2</sup> They are likewise obliged to return other benefits received from the company to the extent these are manifestly disproportionate to the performance rendered in return and to the company's economic situation.

<sup>3</sup> The claim for restitution accrues to the company and the shareholder; the latter sues for performance to the company.

<sup>4</sup> The obligation to return such benefits becomes time-barred five years after they were received.

**Art. 679**<sup>374</sup>

II. Shares of profits paid to board members on insolvency

<sup>1</sup> Where the company is declared insolvent, the members of the board of directors must return all shares of profits paid to board members received in the three years prior to commencement of insolvency proceedings, unless they can show that the conditions for payment of such shares of profits paid to board members set out in law and the articles of association were met; in particular, they must show that the payment was based on prudent accounting.

<sup>2</sup> ...<sup>375</sup>

<sup>372</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>373</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>374</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>375</sup> Repealed by the Annex to the FA of 21 June 2013, with effect from 1 Jan 2014 (AS 2013 4111; BBl 2010 6455).

**Art. 680**

F. Shareholder's  
duty to contrib-  
ute  
I. Object

<sup>1</sup> A shareholder may not be required, even under the articles of association, to contribute more than the amount fixed for subscription of a share on issue.

<sup>2</sup> A shareholder does not have the right to reclaim the amount paid-up.

**Art. 681**

II. Consequences  
of default  
1. By law and  
the articles of  
association

<sup>1</sup> A shareholder who fails to pay in the issue amount for his share in good time is obliged to pay default interest.

<sup>2</sup> Further, the board of directors has the power to declare that the defaulting shareholder has forfeited his rights in respect of the share subscription and any part payments already made and that his shares are forfeited and to issue new ones in their place. Where the forfeited shares have already been issued and cannot be physically obtained, such declaration of forfeiture is published in the Swiss Official Gazette of Commerce and in the form envisaged by the articles of association.

<sup>3</sup> The articles of association may also provide that a shareholder in default also be required to pay a contractual penalty.

**Art. 682**

2. Call for  
performance

<sup>1</sup> Where the board of directors intends to declare the defaulting shareholder in forfeit of his rights in respect of the share subscription or to require him to pay the contractual penalty provided for in the articles of association, it must make at least three calls for payment in the Swiss Official Gazette of Commerce and in the form provided for by the articles of association and set a grace period for such payment of at least one month commencing on the date on which the last call was published. The shareholder may be declared in forfeit of his rights in respect of the share subscription or required to pay the contractual penalty only if he fails to make the required payment within such grace period.

<sup>2</sup> In the case of registered shares, such publication is replaced by a registered letter sent to each shareholder entered in the share register calling for payment and setting the grace period. In this case the grace period commences on receipt of the call for payment.

<sup>3</sup> The defaulting shareholder is liable to the company for the amount not covered by the contributions of the new shareholder.

**Art. 683**

G. Issue and  
transfer of shares  
I. Bearer shares

<sup>1</sup> Bearer shares may be issued only after the full nominal value has been paid up.

<sup>2</sup> Shares issued before the full nominal value is paid up are void. Claims for damages are reserved.

**Art. 684**<sup>376</sup>

II. Registered shares

<sup>1</sup> Unless otherwise provided by law or the articles of association, the company's registered shares are transferable without restriction.

<sup>2</sup> Transfer by means of transaction may also be effected by handing over the endorsed share certificate to the acquirer.

**Art. 685**<sup>377</sup>

H. Restricted transferability  
I. Statutory restriction

<sup>1</sup> Registered shares that have not yet been fully paid up may be transferred only with the consent of the company, unless they are acquired by inheritance, division of estate, matrimonial property law or compulsory execution.

<sup>2</sup> The company may withhold consent only if the solvency of the acquirer is in doubt and the security requested by the company is not furnished.

**Art. 685a**<sup>378</sup>

II. Restrictions under the articles of association  
1. General principles

<sup>1</sup> The articles of association may stipulate that registered shares may be transferred only with the consent of the company.

<sup>2</sup> This restriction also applies to establishment of a usufruct.

<sup>3</sup> If the company goes into liquidation, the restriction on transferability is cancelled.

**Art. 685b**<sup>379</sup>

2. Unlisted registered shares  
a. Requirements for refusal

<sup>1</sup> The company may refuse to give such consent providing it states good cause cited in the articles of association or offers to acquire the shares from the party alienating them for the company's own account, for the account of other shareholders or for the account of third parties at their real value at the time the request was made.

<sup>2</sup> Provisions governing the composition of the shareholder group which are designed to safeguard the pursuit of the company's objects or its economic independence are deemed to constitute good cause.

<sup>376</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>377</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>378</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>379</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>3</sup> Further, the company may refuse entry in the share register where the acquirer fails to declare expressly that he has acquired the shares in his own name and for his own account.

<sup>4</sup> Where the shares were acquired by inheritance, division of estate, matrimonial property law or compulsory execution, the company may withhold its consent only if it offers to purchase the shares from the acquirer at their real value.

<sup>5</sup> The acquirer may request the court at the seat of the company to determine the real value. The costs of the valuation are borne by the company.

<sup>6</sup> Where the acquirer fails to decline such offer within a month of notification of the real value, it is deemed accepted.

<sup>7</sup> The articles of association may not impose more restrictive conditions on transferability.

**Art. 685<sup>c</sup>**<sup>380</sup>

b. Effect

<sup>1</sup> Where the consent required for transfer of shares is not given, the ownership of the shares and all attendant rights remain with the alienator.

<sup>2</sup> In the case of acquisition of shares by inheritance, division of estate, matrimonial property law or compulsory execution, ownership and the attendant pecuniary rights pass to the acquirer immediately, whereas the attendant participation rights pass to him only when the company has given its consent.

<sup>3</sup> Where the company fails to refuse the request for consent within three months of receipt or refuses it without just cause, consent is deemed to have been given.

**Art. 685<sup>d</sup>**<sup>381</sup>

3. Listed registered shares  
a. Requirements for refusal

<sup>1</sup> In the case of listed registered shares, the company may refuse to accept the acquirer as a shareholder only where the articles of association envisage a percentage limit on the registered shares for which an acquirer must be recognised as shareholder and such limit is exceeded.

<sup>2</sup> Further, the company may refuse entry in the share register where at the company's request the acquirer fails to declare expressly that he has acquired the shares in his own name and for his own account.

<sup>380</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>381</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>3</sup> Where listed<sup>382</sup> registered shares were acquired by inheritance, division of estate or matrimonial property law, entry of the acquirer may not be refused.

**Art. 685e**<sup>383</sup>

b. Duty of notification

Where listed registered shares are sold on a stock exchange, the selling bank must without delay notify the company of the name of the seller and the number of shares sold.

**Art. 685f**<sup>384</sup>

c. Transfer of rights

<sup>1</sup> Where listed registered shares are acquired on a stock exchange, the attendant rights pass to the acquirer on transfer. Where listed registered shares are acquired off-exchange, the attendant rights pass to the acquirer as soon as he has submitted a request for recognition as shareholder to the company.

<sup>2</sup> Until such recognition of the acquirer by the company, he may not exercise the voting right conferred by the shares or any other rights associated with such voting right. The acquirer is not restricted in his exercise of any other shareholder rights, in particular subscription rights.

<sup>3</sup> Acquirers not yet recognised by the company are entered as shareholders without voting rights in the share register once the rights have been transferred. The corresponding shares are deemed to be unrepresented at the general meeting.

<sup>4</sup> Where the company's refusal is unlawful, the company must recognise the acquirer's voting right and the rights associated therewith from the date of the court judgment and pay the acquirer damages unless it can show that it was not at fault.

**Art. 685g**<sup>385</sup>

d. Time limit for refusal

Where the company fails to refuse the request for recognition within 20 days, the shareholder is deemed to have been recognised.

<sup>382</sup> Revised by the Federal Assembly Drafting Committee (Art. 33 ParlPA; AS 1974 1051).

<sup>383</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>384</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>385</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).



**Art. 686**<sup>386</sup>

4. Share register
- a. Entry
- 1 The company keeps a share register of registered shares in which the names and addresses of the owners and usufructuaries are recorded. It must be kept in such a manner that it can be accessed at any time in Switzerland.<sup>387</sup>
  - 2 Entry in the share register requires documentary proof that the share was acquired for ownership or of the reasons for the usufruct thereof.
  - 3 The company must certify such entry on the share certificate.
  - 4 In relation to the company the shareholder or usufructuary is the person entered in the share register.
  - 5 The documents on which an entry is based must be retained for ten years following the deletion of the owner or usufructuary from the share register.<sup>388</sup>

**Art. 686a**<sup>389</sup>

- b. Deletion
- After hearing the parties involved the company may delete entries in the share register that resulted from false information supplied by the acquirer. The latter must be informed of the deletion immediately.

**Art. 687**

5. Registered shares not fully paid in<sup>390</sup>
- 1 The acquirer of a registered share that is not fully paid up has an obligation to the company to pay up the remainder as soon as he is entered in the share register.
  - 2 Where the person who subscribed for the share alienates it, he may be sued for the amount not paid up if the company becomes insolvent within two years of its entry in the commercial register and his legal successor has forfeited his rights arising from the share.
  - 3 Where the seller is not the person who subscribed for the share, he is released from the duty to pay up as soon as the acquirer is entered in the share register.
  - 4 Until such time as registered shares are fully paid up, the amount of the nominal value paid up must be entered on each share certificate.

<sup>386</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BB1 1983 II 745).

<sup>387</sup> Second sentence inserted by No I 2 of the FA of 12 Dec 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS 2015 1389; BB1 2014 605).

<sup>388</sup> Inserted by No I 2 of the FA of 12 Dec 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS 2015 1389; BB1 2014 605).

<sup>389</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BB1 1983 II 745).

<sup>390</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BB1 1983 II 745).

## III. Interim certificates

**Art. 688**

<sup>1</sup> Interim certificates made out to the bearer may be issued only for bearer shares whose the nominal value is fully paid up. Interim certificates made out to the bearer issued before the full nominal value is paid up are void. Claims for damages are reserved.

<sup>2</sup> Where interim certificates made out to the named holder are issued for bearer shares, they may be transferred only in accordance with the provisions governing assignment of claims, although their transfer does not take effect as against the company until it receives notice thereof.

<sup>3</sup> Interim certificates for registered shares must be made out to a named holder. The transfer of such interim certificates is subject to the provisions governing the transfer of registered shares.

**Art. 689**<sup>391</sup>

## J. Personal membership rights

## I. Participation in general meetings of shareholders

## 1. General principle

<sup>1</sup> The shareholder exercises his rights in the company's affairs, such as the appointment of the governing officers, approval of the annual report and resolutions concerning allocation of the profit, at the general meeting.

<sup>2</sup> He may represent his shares at the general meeting himself or may have them represented by a third party who, subject to contrary provision in the articles of association, need not be a shareholder.

**Art. 689a**<sup>392</sup>

## 2. Entitlement as against the company

<sup>1</sup> The membership rights conferred by registered shares may be exercised by any person authorised so to do by entry in the share register or a written power of attorney issued by the shareholder.

<sup>2</sup> The membership rights conferred by bearer shares may be exercised by any person who shows he is in possession of the shares by presenting them. The board of directors may direct that some other form of proof of possession be given.

**Art. 689b**<sup>393</sup>3. Representation of the shareholder  
a. In general

<sup>1</sup> A person exercising participation rights as a representative must comply with the instructions of the represented party.

<sup>391</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>392</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>393</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>2</sup> A person in possession of a bearer share as a result of pledge, bailment or loan may exercise the attendant membership rights only if specially authorised to do so by the shareholder in writing.

**Art. 689c**<sup>394</sup>

b. Governing officer as representative

Where the company proposes a member of its governing bodies or some other associate of the company to the shareholders to represent their voting rights at a general meeting, it must simultaneously designate an independent person who may be entrusted by the shareholders with the task of representing them.

**Art. 689d**<sup>395</sup>

c. Custodian as representative

<sup>1</sup> Where a custodian wishes to act as representative in exercising the participation rights attaching to shares deposited with him, he asks the depositors for voting instructions prior to every general meeting.

<sup>2</sup> Where the depositors' instructions cannot be obtained in good time, the custodian exercises their voting rights in accordance with their general instructions; in the absence of general instructions, he votes in favour of the motions proposed by the board of directors.

<sup>3</sup> Institutions subject to the Federal Act of 8 November 1934<sup>396</sup> on Banks and Savings Banks and professional asset managers are deemed to be custodians acting as representatives.

**Art. 689e**<sup>397</sup>

d. Disclosure

<sup>1</sup> Governing officers, independent representatives of voting rights and custodians acting as representatives inform the company of the number, type, nominal value and class of the shares they represent. Failure to disclose such information renders the resolutions of the general meeting subject to challenge on the same conditions as apply to unauthorised participation in the general meeting.

<sup>2</sup> The chairman gives the general meeting the information as aggregates for each form of representation. If he fails to do so even though a shareholder has requested it, any shareholder may challenge the resolutions of the general meeting by bringing action against the company.

<sup>394</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>395</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>396</sup> SR 952.0

<sup>397</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

**Art. 690**

4. Multiple beneficiaries<sup>398</sup>

<sup>1</sup> Where a share is owned collectively, the beneficiaries of the rights it confers may exercise such rights only through a joint representative.

<sup>2</sup> In the case of the usufruct of a share, such rights are represented by the usufructuary; he is liable in damages to the owner for any failure to take due account of the latter's interests when exercising them.

**Art. 691**

II. Unauthorised participation

<sup>1</sup> The lending of shares for the purpose of exercising voting rights at a general meeting is forbidden if the intention in so doing is to circumvent a restriction on voting rights.

<sup>2</sup> Every shareholder is entitled to object to the participation of unauthorised persons to the board of directors or in the minutes of the general meeting.

<sup>3</sup> Where persons who are not authorised to participate in the general meeting participate in a decision on a resolution, any shareholder may challenge that resolution even if he has not raised an objection, unless the company can prove that their involvement exerted no influence on the decision made.

**Art. 692**

III. Voting rights at general meetings of shareholders

1. General principle

<sup>1</sup> The shareholders exercise their voting rights at general meetings of shareholders in proportion to the total nominal value of the shares belonging to them.

<sup>2</sup> Every shareholder has at least one vote, even if he holds only one share. However, the articles of association may impose restrictions on the number of votes cast by holders of multiple shares.

<sup>3</sup> In the event that the nominal value of the shares is reduced as part of a restructuring of the company, the voting right conferred by the original nominal value may be retained.

**Art. 693**

2. Shares with privileged voting rights

<sup>1</sup> The articles of association may stipulate that voting rights are determined regardless of nominal value by the number of shares belonging to each shareholder such that each share confers one vote.

<sup>2</sup> In this case, shares with a lower nominal value than other shares of the same company may be issued only as registered shares and must be

<sup>398</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

fully paid up. The nominal value of these other shares must not exceed ten times the nominal value of the voting shares.<sup>399</sup>

<sup>3</sup> The allocation of voting rights according to number of shares is not applicable for:

1. the election of external auditors;
2. the appointment of experts to audit the company's business management or parts thereof;
3. any resolution concerning the instigation of a special audit;
4. any resolution concerning the initiation of a liability action.<sup>400</sup>

#### Art. 694

3. Entitlement to exercise voting right

Voting right take effect as soon as the amount determined by law or the articles of association is paid up.

#### Art. 695

4. Exclusion of voting right

<sup>1</sup> In the case of resolutions concerning the discharge of the board of directors, persons who have participated in any manner in the management of the company's business have no voting rights.

<sup>2</sup> ...<sup>401</sup>

#### Art. 696<sup>402</sup>

IV. Shareholders' rights of control

1. Availability of the annual report

<sup>1</sup> No later than 20 days prior to the ordinary general meeting, the annual report and audit report must be made available for inspection by the shareholders at the seat of the company. Any shareholder may request that a copy of these reports be sent to him without delay.

<sup>2</sup> Registered shareholders are notified of this in writing, bearer shareholders by publication in the Swiss Official Gazette of Commerce and in the form prescribed by the articles of association.

<sup>3</sup> Any shareholder may request a copy of the annual report in the form approved by the general meeting and of the audit report from the company during the year following the general meeting.

<sup>399</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>400</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>401</sup> Repealed by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), with effect from 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>402</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

**Art. 697**<sup>403</sup>

2. Information and inspection

<sup>1</sup> At the general meeting, any shareholder is entitled to information from the board of directors on the affairs of the company and from the external auditors on the methods and results of their audit.

<sup>2</sup> The information must be given to the extent required for the proper exercise of shareholders' rights. It may be refused where providing it would jeopardise the company's trade secrets or other interests warranting protection.

<sup>3</sup> The company ledgers and business correspondence may be inspected only with the express authorisation of the general meeting or by resolution of the board of directors and only if measures are taken to safeguard trade secrets.

<sup>4</sup> Where information or inspection is refused without just cause, the court may order it on application.<sup>404</sup>

**Art. 697a**<sup>405</sup>

V. Right to instigate a special audit  
1. With approval of the general meeting

<sup>1</sup> Any shareholder may request the general meeting to have specific matters clarified by means of a special audit, where this is necessary for the proper exercise of shareholders' rights and he has already exercised his right to information and inspection.

<sup>2</sup> Where the general meeting adopts the motion, the company or any shareholder may apply to the court within 30 days for appointment of a special auditor.

**Art. 697b**<sup>406</sup>

2. If motion rejected by the general meeting

<sup>1</sup> Where the general meeting rejects the motion, shareholders together representing at least 10 per cent of the share capital or shares with a nominal value of 2 million francs may apply to the court within three months for the appointment of a special auditor.

<sup>2</sup> The applicants are entitled to have a special auditor appointed where they make a prima facie case that the founder members or governing officers have violated the law or the articles of association and thereby harmed the company or the shareholders.

<sup>403</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>404</sup> Amended by Annex 1 No II 5 of the Civil Procedure Code of 19 Dec 2008, in force since 1 Jan 2011 (AS 2010 1739; BBl 2006 7221).

<sup>405</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>406</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

**Art. 697<sup>c407</sup>**

3. Appointment
- 1 The court decides after hearing the company and the applicant.
  - 2 If the court accepts the application, it entrusts an independent expert with the task of carrying out the audit. The court defines the scope of the audit based on the application.
  - 3 The court may also entrust the special audit to several experts jointly.

**Art. 697<sup>d408</sup>**

4. Audit activities
- 1 The special audit must be carried out within a reasonable period and without unnecessary disruption to the company's business.
  - 2 Founder members, governing officers, agents, employees, official receivers and liquidators must provide the special auditor with information on any relevant facts. In cases of doubt, the court decides.
  - 3 The special auditor hears the company on the results of the special audit.
  - 4 He is required to preserve confidentiality.

**Art. 697<sup>e409</sup>**

5. Report
- 1 The special auditor draws up a detailed report on the results of his audit, although he must safeguard trade secrets. He submits his report to the court.
  - 2 The court makes the report available to the company and at its request decides whether any passages in the report violate the company's trade secrets or other interests warranting protection and therefore may not be presented to the applicants.
  - 3 It gives the company and the applicants the opportunity to respond to the content of the report, adapted as necessary, and to ask supplementary questions.

**Art. 697<sup>f410</sup>**

6. Procedure and publication
- 1 The board of directors makes the report and the responses to it available to the next general meeting.
  - 2 Any shareholder may request a copy of the report and the responses to it from the company for one year following the general meeting.

407 Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

408 Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

409 Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

410 Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

**Art. 697g**<sup>411</sup>

7. Costs

<sup>1</sup> Where the court grants the request for the appointment of a special auditor, it orders the company to make an advance payment and bear the costs. Where justified by special circumstances, it may order the applicants to bear some or all of the costs.

<sup>2</sup> Where the general meeting has approved the special audit, the company bears the costs.

**Art. 697h**<sup>412</sup>**Art. 697i**<sup>413</sup>

K. Shareholder's obligation to report

I. Notice of acquisition of bearer shares

<sup>1</sup> Any person who acquires bearer shares in a company whose shares are not listed on a stock exchange must give notice of the acquisition, together with their first name and surname or business name and their address to the company within one month.

<sup>2</sup> The shareholder must prove ownership of the registered share and identify themselves as follows:

- a. as a natural person: by means of an official identity document with photograph, in particular the original or a copy of a passport, identity card or driving licence;
- b. as a Swiss legal entity: by means of an extract from the commercial register;
- c. as a foreign legal entity: by means of a current certified extract from a foreign commercial register or an equivalent document.

<sup>3</sup> The shareholder must give notice of any change to their first name or surname, company name, or address to the company.

<sup>4</sup> The obligation to give notice does not apply if the bearer shares are organised as intermediated securities in accordance with the Intermediated Securities Act of 3 October 2008<sup>414</sup>. The company shall designate the custodian where the bearer shares are held or recorded in the main register; the custodian must be in Switzerland.

<sup>411</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>412</sup> Inserted by No I of the FA of 4 Oct. 1991 (AS 1992 733; BBl 1983 II 745). Repealed by No I I of the FA of 23 Dec 2011 (Financial Reporting Law), with effect from 1 Jan 2013 (AS 2012 6679; BBl 2008 1589).

<sup>413</sup> Inserted by No I 2 of the FA of 12 Dec 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS 2015 1389; BBl 2014 605).

<sup>414</sup> SR 957.1



**Art. 697j**<sup>415</sup>

II. Notice of  
beneficial owner  
of shares

<sup>1</sup> Any person who alone or by agreement with third parties acquires shares in a company whose participation rights are not listed on a stock exchange, and thus reaches or exceeds the threshold of 25 per cent of the share capital or voting rights must within one month give notice to the company of the first name and surname and the address of the natural person for whom it is ultimately acting (the beneficial owner).

<sup>2</sup> If the shareholder is a legal entity or partnership, each natural person that controls the shareholder in analogous application of Article 963 paragraph 2 must be recorded as a beneficial owner. If there is no such person, the shareholder must give notice of this to the company.

<sup>3</sup> If the shareholder is a company whose participation rights are listed on a stock exchange, if the shareholder is controlled by such a company in accordance with Article 963 paragraph 2, or if the shareholder controls such a company in this sense, it must only give notice of this fact and provide details of the company's name and registered office.

<sup>4</sup> The shareholder must give notice to the company within three months of any change to the first name or surname or to the address of the beneficial owner.

<sup>5</sup> The obligation to give notice does not apply if the bearer shares are organised as intermediated securities and deposited with a custodian in Switzerland or entered in the main register. The company shall designate the custodian.

**Art. 697k**<sup>416</sup>

III. Notice to a  
financial  
intermediary and  
obligation of the  
financial  
intermediary to  
provide infor-  
mation

<sup>1</sup> The general meeting may provide that notice under Articles 697i and 697j relating to bearer shares is not given to the company but to a financial intermediary in terms of the Anti-Money Laundering Act of 10 October 1997<sup>417</sup>.

<sup>2</sup> The board of directors shall appoint the financial intermediary and notify the shareholders of whom it has appointed.

<sup>3</sup> The financial intermediary must provide the company at any time with information on the bearer shares for which the required notices have been given and ownership proven.

<sup>415</sup> Inserted by No I 2 of the FA of 12 Dec 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force (AS 2015 1389; BBl 2014 605). Amended by No I 1 of the FA of 21 June 2019 on the Implementation of the Recommendations of the Global Forum on Transparency and the Exchange of Information for Tax Purposes, in force since 1 Nov. 2019 (AS 2019 3161; BBl 2019 279)

<sup>416</sup> Inserted by No I 2 of the FA of 12 Dec 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS 2015 1389; BBl 2014 605).

<sup>417</sup> SR 955.0

**Art. 697<sup>418</sup>**

## IV. Register

<sup>1</sup> The company shall keep a register of bearer shareholders and of the beneficial owners notified to the company.

<sup>2</sup> This register shall contain the first name and surname or business name and the address of the bearer shareholders and the beneficial owners. It also contains the nationality and date of birth of the bearer shareholders.

<sup>3</sup> The documents on which notice under Articles 697*i* and 697*j* are based must be retained for ten years following the person's deletion from the register.

<sup>4</sup> If the company has appointed a financial intermediary under Article 697*k*, this intermediary is responsible for keeping the register and retaining the documents.

<sup>5</sup> The register must be kept in such a manner that it can be accessed in Switzerland at any time.

**Art. 697m<sup>419</sup>**

## V. Failure to comply with obligations to give notice

<sup>1</sup> For as long as the shareholder fails to comply with their obligations to give notice, the membership rights conferred by the shares in respect of which notice of acquisition must be given are suspended.

<sup>2</sup> The shareholder may only exercise the property rights conferred by the shares if they have complied with their obligations to give notice.

<sup>3</sup> If the shareholder fails to comply with their obligations to give notice within one month of acquiring the shares, the property rights lapse. If they give notice at a later date, they may exercise the property rights arising from that date.

<sup>4</sup> The board of directors shall ensure that no shareholders exercise their rights while in breach of their obligations to give notice.

### **Section Three: Organisation of the Company Limited by Shares**

#### **A. The General Meeting**

**Art. 698**

## I. Powers

<sup>418</sup> Inserted by No 12 of the FA of 12 Dec 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS 2015 1389; BBl 2014 605).

<sup>419</sup> Inserted by No 12 of the FA of 12 Dec 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS 2015 1389; BBl 2014 605).

<sup>1</sup> The supreme governing body of a company limited by shares is the general meeting.

<sup>2</sup> It has the following inalienable powers:

1. to determine and amend the articles of association;
2. to elect the members of the board of directors and the external auditors;
- 3.<sup>420</sup> to approve the management report and the consolidated accounts;
4. to approve the annual accounts and resolutions on the allocation of the disposable profit, and in particular to set the dividend and the shares of profits paid to board members;
5. to discharge the members of the board of directors;
6. to pass resolutions concerning the matters reserved to the general meeting by law or the articles of association.<sup>421</sup>

### Art. 699

II. Convocation and agenda items  
1. Right and duty<sup>422</sup>

<sup>1</sup> The general meeting is convened by the board of directors or, where necessary, by the external auditors.<sup>423</sup> The liquidators and the representatives of bond creditors also have the right to convene general meetings.

<sup>2</sup> The ordinary general meeting takes place every year within six months of the end of the financial year, and extraordinary general meetings are convened as and when required.

<sup>3</sup> A general meeting may also be convened by one or more shareholders together representing at least 10 per cent of the share capital. Shareholders together representing shares with a nominal value of 1 million francs may demand that an item be placed on the agenda. Meetings are convened and items placed on the agenda by written request, including details of agenda items and motions.<sup>424</sup>

<sup>4</sup> Where the board of directors fails to grant such a request within a reasonable time, the court must at the request of the applicant order that a general meeting be convened.

<sup>420</sup> Amended by No I 1 of the FA of 23 Dec 2011 (Financial Reporting Law), in force since 1 Jan 2013 (AS 2012 6679; BBl 2008 1589).

<sup>421</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>422</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>423</sup> Term in accordance with No II 2 of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745). This amendment has been made throughout the Code.

<sup>424</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

**Art. 700**<sup>425</sup>

2. Form

<sup>1</sup> Notice convening the general meeting must be given no later than 20 days before the date for which it is scheduled in the form prescribed by the articles of association.

<sup>2</sup> The notice convening the meeting must include the agenda items and the motions of the board of directors and the shareholders who have requested that a general meeting be called or an item be placed on the agenda.

<sup>3</sup> No resolutions may be made on motions relating to agenda items that were not duly notified; exceptions to this are motions to convene an extraordinary general meeting or to carry out a special audit and to appoint an auditor at the request of a shareholder.<sup>426</sup>

<sup>4</sup> No advance notice is required to propose motions on duly notified agenda items and to debate items without passing resolutions.

**Art. 701**

3. Universal meeting

<sup>1</sup> The owners or representatives of all the company's shares may, if no objection is raised, hold a general meeting without complying with the formal requirements for convening meetings.

<sup>2</sup> This meeting may hold validly discuss and pass binding resolutions on all matters within the remit of the general meeting, provided that the owners or representatives of all the shares are present.

**Art. 702**<sup>427</sup>

III. Preparatory measures; minutes

<sup>1</sup> The board of directors takes the necessary measures to determine voting rights.

<sup>2</sup> It ensures that minutes are kept. These record:

1. the number, type, nominal value and class of shares represented by the shareholders, governing officers, independent voting right representatives and custodians acting as representatives;
2. the resolutions and results of the elections;
3. the requests for information and the answers given in reply;
4. the statements made by shareholders for the record.

<sup>3</sup> The shareholders are entitled to inspect the minutes.

<sup>425</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBI 1983 II 745).

<sup>426</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBI 2002 3148, 2004 3969).

<sup>427</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBI 1983 II 745).

**Art. 702<sup>a</sup>**<sup>428</sup>

IV. Participation  
of members of  
the board of  
directors

The members of the board of directors are entitled to participate in the general meeting. They may table motions.

**Art. 703**

V. Resolutions  
and elections  
1. In general<sup>429</sup>

Unless otherwise provided by law or the articles of association, the general meeting passes resolutions and conducts elections by an absolute majority of the voting rights represented.

**Art. 704**<sup>430</sup>

2. Important  
resolutions

<sup>1</sup> A resolution by the general meeting requires at least two-thirds of the voting rights represented and an absolute majority of the nominal value of shares represented for:

1. any amendment of the company's objects;
2. the introduction of shares with preferential voting rights;
3. any restriction on the transferability of registered shares;
- 4.<sup>431</sup> an authorised or contingent capital increase or the creation of reserve capital in accordance with Article 12 of the Banking Act of 8 November 1934<sup>432</sup>;
5. a capital increase funded by equity capital, against contributions in kind or to fund acquisitions in kind and the granting of special privileges;
6. any restriction or cancellation of the subscription right;
7. a relocation of the seat of the company;
- 8.<sup>433</sup> the dissolution of the company

<sup>2</sup> Provisions of the articles of association which stipulate that larger majorities than those prescribed by law are required in order to make

<sup>428</sup> Inserted by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>429</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>430</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>431</sup> Amended by Annex No I of the FA of 30 Sept. 2011 (Securing Stability in the Financial Sector), in force since 1 March 2012 (AS 2012 811; BBl 2011 4717).

<sup>432</sup> SR 952.0

<sup>433</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

certain resolutions may themselves be introduced only with the planned majority.

<sup>3</sup> Registered shareholders who did not vote in favour of a resolution to amend the company's objects or to introduce shares with preferential voting rights are not bound by restrictions on the transferability of their shares imposed by the articles of association for six months following publication of such resolutions in the Swiss Official Gazette of Commerce.

**Art. 704a**<sup>434</sup>

3. Conversion of bearer shares into registered shares

The resolution of the general meeting on the conversion of bearer shares into registered shares may be passed by a majority of votes cast. The articles of association must not impede the conversion.

**Art. 705**

VI. Dismissal of the board of directors and the auditors<sup>435</sup>

<sup>1</sup> The general meeting is entitled to dismiss the members of the board of directors and the external auditors and any registered attorneys or commercial agents appointed by them.

<sup>2</sup> The claims for compensation of persons thus dismissed are reserved.

**Art. 706**

VII. Challenging resolutions of the general meeting

1. Right of action and grounds<sup>436</sup>

<sup>1</sup> The board of directors and every shareholder may challenge resolutions of the general meeting which violate the law or the articles of association by bringing action against the company before the court.

<sup>2</sup> In particular, challenges may be brought against resolutions which

1. remove or restrict the rights of shareholders in breach of the law or the articles of association;
2. remove or restrict the rights of shareholders in an improper manner;
3. give rise to the unequal treatment or disadvantaging of the shareholders in a manner not justified by the company's objects;

<sup>434</sup> Inserted by No I 2 of the FA of 12 Dec 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS 2015 1389; BBl 2014 605).

<sup>435</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>436</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

4. transform the company into a non-profit organisation without the consent of all the shareholders.<sup>437</sup>

3–4 ...<sup>438</sup>

<sup>5</sup> A court judgment that annuls a resolution made by the general meeting is effective for and against all the shareholders.

**Art. 706a**<sup>439</sup>

2. Procedure

<sup>1</sup> The right to challenge lapses if the action is not brought within two months of the general meeting.

<sup>2</sup> Where the board of directors is the claimant, the court appoints a representative for the company.

3 ...<sup>440</sup>

**Art. 706b**<sup>441</sup>

VIII. Nullity<sup>442</sup>

In particular, resolutions of the general meeting are void if they:

1. remove or restrict the right to participate in the general meeting, the minimum voting right, the right to take legal action or other shareholder rights that are mandatory in law;
2. restrict the shareholders' rights of control beyond the legally permissible degree, or
3. disregard the basic structures of the company limited by shares or the provisions on capital protection.

<sup>437</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>438</sup> Repealed by No I of the FA of 4 Oct. 1991, with effect 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>439</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>440</sup> Repealed by Annex 1 No II 5 of the Civil Procedure Code of 19 Dec 2008, with effect from 1 Jan 2011 (AS 2010 1739; BBl 2006 7221).

<sup>441</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>442</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

## B. The Board of Directors<sup>443</sup>

### Art. 707

I. In general  
1. Eligibility<sup>444</sup>

<sup>1</sup> The company's board of directors comprises one or more members.<sup>445</sup>

2 ...<sup>446</sup>

<sup>3</sup> Where a legal entity or commercial company holds an equity participation in the company, it is not eligible as such to serve as a member of the board of directors; however, its representative may be elected in its stead.

### Art. 708<sup>447</sup>

2. ...

### Art. 709<sup>448</sup>

3. Representation of shareholder classes and groups<sup>449</sup>

<sup>1</sup> Where two or more different share classes exist with regard to voting or property rights, the articles of association must stipulate that the shareholders of each different share class are entitled to elect at least one representative to the board of directors.

<sup>2</sup> The articles of association may contain special provisions to protect minorities or specific groups of shareholders.

<sup>443</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>444</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>445</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>446</sup> Repealed by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), with effect from 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>447</sup> Repealed by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), with effect from 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>448</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>449</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).



**Art. 710**<sup>450</sup>4. Term of office<sup>451</sup>

1 The members of the board of directors are elected for a three-year term of office unless the articles of association provide otherwise. However, the term of office must not exceed six years.

2 Re-election is possible.

**Art. 711**<sup>452</sup>**Art. 712**<sup>453</sup>II. Organisation  
1. Chairman and secretary

1 The board of directors appoints a chairman and a secretary. The latter need not be a member of the board of directors.

2 The articles of association may stipulate that the chairman be elected by the general meeting.

**Art. 713**<sup>454</sup>

2. Resolutions

1 The resolutions of the board of directors are made by majority of votes cast. The chairman has a casting vote, unless the articles of association provide otherwise.

2 Resolutions may also be made by written consent to a proposed motion, provided no member requests that it be debated orally.

3 Minutes are kept of the board's discussions and resolutions and signed by the chairman and the secretary.

**Art. 714**<sup>455</sup>

3. Void resolutions

The grounds for the nullity of resolutions by the general meeting apply *mutatis mutandis* to resolutions by the board of directors.

450 Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

451 Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

452 Repealed by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), with effect from 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

453 Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

454 Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

455 Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

4. Right to convene meetings

**Art. 715**<sup>456</sup>

Any member of the board of directors may request that the chairman convene a meeting without delay, but must state the reasons for his request.

5. Right to information and inspection

**Art. 715a**<sup>457</sup>

<sup>1</sup> Any member of the board of directors may request information on any company business.

<sup>2</sup> At meetings, all members of the board of directors and all persons entrusted with managing the company's business are obliged to give information.

<sup>3</sup> Outside meetings, any member may request information from the persons entrusted with managing the company's business concerning the company's business performance and, with the chairman's authorisation, specific transactions.

<sup>4</sup> Where required for the performance of his duties, any member may request the chairman to have books of account and documents made available to him for inspection.

<sup>5</sup> If the chairman refuses a request for information, a request to be heard or an application to inspect documents, the board of directors rules on the matter.

<sup>6</sup> Rulings or resolutions of the board of directors conferring on the directors more extensive rights to obtain information or inspect documents are reserved.

III. Duties  
1. In general

**Art. 716**<sup>458</sup>

<sup>1</sup> The board of directors may pass resolutions on all matters not reserved to the general meeting by law or the articles of association.

<sup>2</sup> The board of directors manages the business of the company, unless responsibility for such management has been delegated.

2. Non-transferable duties

**Art. 716a**<sup>459</sup>

<sup>1</sup> The board of directors has the following non-transferable and inalienable duties:

<sup>456</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>457</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>458</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>459</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

1. the overall management of the company and the issuing of all necessary directives;
2. determination of the company's organisation;
3. the organisation of the accounting, financial control and financial planning systems as required for management of the company;
4. the appointment and dismissal of persons entrusted with managing and representing the company;
5. overall supervision of the persons entrusted with managing the company, in particular with regard to compliance with the law, articles of association, operational regulations and directives;
6. compilation of the annual report<sup>460</sup>, preparation for the general meeting and implementation of its resolutions;
7. notification of the court in the event that the company is over-indebted.

<sup>2</sup> The board of directors may assign responsibility for preparing and implementing its resolutions or monitoring transactions to committees or individual members. It must ensure appropriate reporting to its members.

#### **Art. 716b**<sup>461</sup>

3. Delegation of business management

<sup>1</sup> The articles of association may authorise the board of directors to delegate the management of all or part of the company's business to individual members or third parties in accordance with its organisational regulations.

<sup>2</sup> These regulations regulate the management of the company's business, stipulate the bodies required to carry this out, define their duties and, in particular, regulate the company's internal reporting. On request, the board of directors issues information in writing concerning the organisation of the business management to shareholders and company creditors with a demonstrable interest warranting protection.

<sup>3</sup> Where management of the company's business has not been delegated, it is the responsibility of all the members of the board of directors.

#### **Art. 717**<sup>462</sup>

IV. Duty of care and loyalty

<sup>460</sup> Revised by the Federal Assembly Drafting Committee (Art. 33 ParlPA; AS 1974 1051).

<sup>461</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>462</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>1</sup> The members of the board of directors and third parties engaged in managing the company's business must perform their duties with all due diligence and safeguard the interests of the company in good faith.

<sup>2</sup> They must afford the shareholders equal treatment in like circumstances.

**Art. 718**<sup>463</sup>

V. Representa-  
tion  
1. In general

<sup>1</sup> The board of directors represents the company externally. Unless the articles of association or the organisational regulations stipulate otherwise, every member has authority to represent the company.

<sup>2</sup> The board of directors may delegate the task of representation to one or more members (managing directors) or third parties (executive officers).

<sup>3</sup> At least one member of the board of directors must be authorised to represent the company.

<sup>4</sup> The company must be able to be represented by one person who is resident in Switzerland. This person must be a member of the board of directors or an executive officer. They must have access to the share register and to the register under Article 697I, unless this register is kept by a financial intermediary.<sup>464</sup>

**Art. 718a**<sup>465</sup>

2. Scope and  
restriction

<sup>1</sup> The persons with authority to represent the company may carry out any legal acts on behalf of the company that are consistent with the company's objects.

<sup>2</sup> A restriction of such authority has no effect as against bona fide third parties; any provisions governing exclusive representation of the head office or a branch office or governing joint representation of the company that are entered in the commercial register are exceptions to this rule.

<sup>463</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>464</sup> Inserted by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names) (AS 2007 4791; BBl 2002 3148, 2004 3969). Amended by No I 2 of the FA of 12 Dec 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS 2015 1389; BBl 2014 605).

<sup>465</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

**Art. 718<sup>b</sup>**<sup>466</sup>

3. Contracts  
between the  
company and its  
representative

If the company is represented in the conclusion of a contract by the person with whom it is concluding the contract, the contract must be done in writing. This requirement does not apply to contract relating to everyday business where the value of the company's goods or services does not exceed 1,000 francs.

**Art. 719**

3. Signatures<sup>467</sup>

The persons with authority to represent the company must sign by appending their signature to the business name of the company.

**Art. 720**

4. Registra-  
tion<sup>468</sup>

The board of directors must apply to have the persons with authority to represent the company entered in the commercial register and submit an authenticated copy of the relevant resolution. They must enter their own signatures in person at the commercial registry or submit these in a duly authenticated form.

**Art. 721**<sup>469</sup>

5. Registered  
attorneys and  
commercial  
agents<sup>470</sup>

The board of directors may appoint registered attorneys and other commercial agents.

<sup>466</sup> Inserted by No I of the FA of 4 Oct. 1991 (AS 1992 733; BBl 1983 II 745). Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>467</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969969).

<sup>468</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>469</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>470</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

**Art. 722**<sup>471</sup>

VI. Directors' and officers' liability<sup>472</sup>

The company is liable for any loss or damage caused by unauthorised acts carried out in the exercise of his company function by a person with authority to represent the company or manage its business.

**Art. 723–724**<sup>473</sup>**Art. 725**<sup>474</sup>

VII. Capital loss and overindebtedness

1. Duty to notify

<sup>1</sup> Where the last annual balance sheet shows that one-half of the share capital and the legal reserves are no longer covered, the board of directors must without delay convene a general meeting and propose financial restructuring measures.

<sup>2</sup> Where there is good cause to suspect overindebtedness, an interim balance sheet must be drawn up and submitted to a licensed auditor for examination.<sup>475</sup> If the interim balance sheet shows that the claims of the company's creditors are not covered, whether the assets are appraised at going concern or liquidation values, the board of directors must notify the court unless certain company creditors subordinate their claims to those of all other company creditors to the extent of the capital deficit.

<sup>3</sup> If the company does not have an auditor, the licensed auditor must comply with the reporting duties of the auditor conducting a limited audit.<sup>476</sup>

**Art. 725a**<sup>477</sup>

2. Commencement or stay of insolvency proceedings

<sup>1</sup> On receiving notification, the court commences insolvency proceedings. On application by the board of directors or by a creditor it may

<sup>471</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>472</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>473</sup> Repealed by No I of the FA of 4 Oct. 1991, with effect from 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>474</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>475</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>476</sup> Inserted by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>477</sup> Inserted by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

grant a stay of insolvency proceedings where there is a prospect of financial restructuring; in this case the court orders measures to preserve the company's assets.

<sup>2</sup> The court may appoint an administrative receiver and either deprive the board of directors of its power of disposal or make its resolutions conditional on the consent of the administrative receiver. It defines the duties of the administrative receiver.

<sup>3</sup> Public notice of the stay of insolvency proceedings is required only where necessary to protect third parties.

### Art. 726

VIII. Dismissal  
and suspension<sup>478</sup>

<sup>1</sup> The board of directors may dismiss committees, managing directors, executive officers, registered attorneys and other commercial agents that it has appointed at any time.

<sup>2</sup> The registered attorneys and commercial agents appointed by the general meeting may be suspended from their duties at any time by the board of directors, providing a general meeting is convened immediately.

<sup>3</sup> Claims for compensation by persons dismissed or suspended are reserved.

### C. <sup>479</sup> The External Auditors

#### Art. 727

I. Audit requirement  
1. Ordinary audit

<sup>1</sup> The following companies must have their annual accounts and if applicable their consolidated accounts reviewed by an auditor in an ordinary audit:

1. publicly traded companies; these are companies that:
  - a. have equity securities listed on a stock exchange,
  - b. have bonds outstanding,
  - c. contribute at least 20 per cent of the assets or of the turnover to the consolidated accounts of a company in terms of letter a or b;

<sup>2,480</sup> companies that exceed two of the following thresholds in two successive financial years:

<sup>478</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>479</sup> Amended by No I 1 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>480</sup> Amended by No I of the FA of 17 June 2011 (Auditing Law), in force since 1 Jan 2012 (AS 2011 5863; BBl 2008 1589). See also the Transitional provision below relating to this amendment.

- a. a balance sheet total of 20 million francs,
- b. sales revenue of 40 million francs,
- c. 250 full-time positions on annual average;

3. companies that are required to prepare consolidated accounts.

<sup>2</sup> An ordinary audit must be carried out if shareholders who represent at least 10 per cent of the share capital so request.

<sup>3</sup> If the law does not require an ordinary audit of the annual accounts, the articles of association may provide or the general meeting may decide that the annual accounts be subjected to an ordinary audit.

### **Art. 727a**

#### 2. Limited audit

<sup>1</sup> If the requirements for an ordinary audit are not met, the company must have its annual accounts reviewed by an auditor in a limited audit.

<sup>2</sup> With the consent of all the shareholders, a limited audit may be dispensed with if the company does not have more than ten full-time employees on annual average.

<sup>3</sup> The board of directors may request the shareholders in writing for their consent. It may set a period of at least 20 days for reply and give notice that failure to reply will be regarded as consent.

<sup>4</sup> If the shareholders have dispensed with a limited audit, this also applies for subsequent years. Any shareholder has however the right, at the latest 10 days before the general meeting, to request a limited audit. In such an event, the general meeting must appoint the auditor.

<sup>5</sup> The board of directors amends the articles of association to the extent required and applies to the commercial register for the deletion or the registration of the auditor.

### **Art. 727b**

#### II. Requirements for the auditor

##### 1. In an ordinary audit

<sup>1</sup> Publicly traded companies must appoint as an auditor an audit firm under state oversight in terms of the Auditor Oversight Act of 16 December 2005<sup>481</sup>. They must also arrange for audits that must be carried out in terms of the statutory provisions by a licensed auditor or a licensed audit expert to be carried out by a state supervised audit company.

<sup>2</sup> Other companies that are required to have an ordinary audit must appoint as auditor a licensed audit expert in terms of the Auditor Oversight Act of 16 December 2005. They must also arrange for audits that must be carried out in terms of the statutory provisions by a licensed auditor to be carried out by a licensed audit expert.

<sup>481</sup> SR 221.302



**Art. 727c**

2. In a limited  
audit

Companies that are required to have a limited audit must appoint as auditor a licensed auditor in terms of the Auditor Oversight Act of 16 December 2005<sup>482</sup>.

**Art. 728**

III. Ordinary  
audit  
1. Independence  
of the auditor

<sup>1</sup> The auditor must be independent and form its audit opinion objectively. Its true or apparent independence must not be adversely affected.

<sup>2</sup> The following are in particular not compatible with independence:

1. membership of the board of directors, any other decision-making function in the company or any employment relationship with it;
2. a direct or significant indirect participation in the share capital or a substantial claim against or debt due to the company;
3. a close relationship between the person managing the audit and a member of the board of directors, another person in a decision-making function, or a major shareholder;
4. the involvement in the accounting or the provision of any other services which give rise to a risk that the auditor will have to review its own work;
5. the assumption of a duty that leads to economic dependence;
6. the conclusion of a contract on non-market conditions or of a contract that establishes an interest on the part of the auditor in the result of the audit;
7. the acceptance of valuable gifts or of special privileges.

<sup>3</sup> The provisions on independence apply to all persons involved in the audit. If the auditor is a partnership or a legal entity, then the provisions on independence also apply to the members of the supreme management or administrative body and to other persons with a decision-making function.

<sup>4</sup> Employees of the auditor that are not involved in the audit may not be members of the board of directors or exercise any other decision-making function in the company being audited.

<sup>5</sup> There is no independence if persons who do not meet the requirements of independence are closely connected to the auditor, persons involved in the audit, the members of the supreme management or administrative bodies or others persons with a decision-making function.

<sup>6</sup> The provisions on independence also apply to companies that are under the same management as the company being audited or the auditor.

### **Art. 728a**

2. Duties of the auditor  
a. Subject matter and extent of the audit

<sup>1</sup> The auditor examines whether:

1. the annual accounts and, if applicable, the consolidated accounts comply with the statutory provisions, the articles of association and the chosen set of financial reporting standards;
2. the motion made by the board of directors to the general meeting on the allocation of the balance sheet profit complies with the statutory provisions and the articles of association;
3. there is an internal system of control.

<sup>2</sup> The auditor takes account of the internal system of control when carrying out the audit and in determining the extent of the audit.

<sup>3</sup> The management of the board of directors is not the subject matter of the audit carried out by the auditor.

### **Art. 728b**

b. Audit report

<sup>1</sup> The auditor provides the board of directors with a comprehensive report with conclusions on the financial reporting, the internal system of control as well as the conduct and the result of the audit.

<sup>2</sup> The auditor provides the general meeting with a summary report in writing on the result of the audit. This report contains:

1. an assessment on the result of the audit;
2. information on independence;
3. information on the person who managed the audit and on his specialist qualifications;
4. a recommendation on whether the annual accounts and the consolidated accounts should be approved or rejected with or without qualification.

<sup>3</sup> Both reports must be signed by the person who managed the audit.

### **Art. 728c**

c. Duty to notify

<sup>1</sup> If the auditor finds that there have been infringements of the law, the articles of association or the organisational regulations, it gives notice of this to the board of directors in writing.

<sup>2</sup> In addition, it informs the general meeting of any infringements of the law or the articles of association, if:

1. these are material; or
2. the board of directors fails to take any appropriate measures on the basis of written notice given by the auditor.

<sup>3</sup> If the company is clearly overindebted and the board of directors fails to notify the court of this, then the auditor will notify the court.

### **Art. 729**

IV. Limited audit  
(Review)  
1. Independence  
of the auditor

<sup>1</sup> The auditor must be independent and form its audit assessment objectively. Its true or apparent independence must not be adversely affected.

<sup>2</sup> Involvement in the accounting and the provision of other services for the company being audited are permitted. In the event that the risk of auditing its own work arises, a reliable audit must be ensured by means of suitable organisational and staffing measures.

### **Art. 729a**

2. Duties of the  
auditor  
a. Subject matter  
and extent of the  
audit

<sup>1</sup> The auditor examines whether there are circumstances that indicate that:

1. the annual accounts do not comply with the statutory provisions or the articles of association;
2. the motion made by the board of directors to the general meeting on the allocation of the balance sheet profit does not comply with the statutory provisions and the articles of association.

<sup>2</sup> The audit is limited to conducting interviews, analytical audit activities and appropriate detailed inspections.

<sup>3</sup> The management of the board of directors is not the subject matter of the audit carried out by the auditor.

### **Art. 729b**

b. Audit report

<sup>1</sup> The auditor provides the general meeting with a summary report in writing on the result of the audit. This report contains:

1. a reference to the limited nature of the audit;
2. an assessment on the result of the audit;
3. information on independence and, if applicable, on participation in accounting and other services provided to the company being audited;
4. information on the person who managed the audit, and on his specialist qualifications.

<sup>2</sup> The report must be signed by the person who managed the audit.

**Art. 729c**

c. Duty to notify    If the company is obviously overindebted and the board of directors fails to notify the court, then the auditor will notify the court.

**Art. 730**

V. Common provisions  
1. Appointment of the auditor

<sup>1</sup> The general meeting appoints the auditor.

<sup>2</sup> One or more natural persons or legal entities or partnerships may be appointed.

<sup>3</sup> Public audit offices or their employees may also be appointed as auditor provided they meet the requirements of this Code. The provisions on independence apply *mutatis mutandis*.

<sup>4</sup> At least one member of the auditor must be resident in Switzerland, or have its registered office or a registered branch office in Switzerland.

**Art. 730a**

2. Term of office of the auditor

<sup>1</sup> The auditor is appointed for a period of one up to three financial years. Its term of office ends on the adoption of the annual accounts for the final year. Re-appointment is possible.

<sup>2</sup> In the case of an ordinary audit, the person who manages the audit may exercise his mandate for seven years at the most. He may only accept the same mandate again after an interruption of three years.

<sup>3</sup> If an auditor resigns, it must notify the board of directors of the reasons; the board of directors informs the next general meeting of these reasons.

<sup>4</sup> The general meeting may remove an auditor at any time with immediate effect.

**Art. 730b**

3. Information and confidentiality

<sup>1</sup> The board of directors provides the auditor with all the documents and information that it requires, in writing if so requested.

<sup>2</sup> The auditor safeguards the business secrets of the company in its assessments, unless it is required by law to disclose such information. In its reports, in submitting notices and in providing information to the general meeting, it safeguards the business secrets of the company.

**Art. 730c**

4. Documenta-  
tion and  
safekeeping of  
documents

1 The auditor must document all audit services and keep audit reports and any other essential documents for at least ten years. It must ensure that electronic data can be made readable for the same period.

2 The documents must make it possible to confirm compliance with the statutory provisions in an efficient manner.

**Art. 731**

5. Approval of  
the accounts and  
allocation of  
profits

1 In companies that are required to have their annual accounts and, if applicable, their consolidated accounts reviewed by an auditor, the audit report must be submitted, before the annual accounts and the consolidated accounts are approved at the general meeting, and a resolution is passed on the allocation of the balance sheet profit.

2 If an ordinary audit is carried out, the auditor must be present at the general meeting. The general meeting may waive the presence of the auditor by unanimous resolution.

3 If the required audit report is not submitted, the resolutions on the approval of the annual accounts and the consolidated accounts as well as on the allocation of the balance sheet profit are null and void. If the provisions on the presence of the auditor are infringed, these resolutions may be challenged.

**Art. 731a**

6. Special  
provisions

1 The articles of association and the general meeting may specify details on the organisation of the auditor in more detail and expand its range of duties.

2 The auditor may not be assigned duties of the board of directors, or duties that adversely affect its independence.

3 The general meeting may appoint experts to audit the management or individual aspects thereof.

**D.<sup>483</sup> Defects in the Organisation of the Company****Art. 731b**

1 Any shareholder or creditor or the commercial registrar may request the court to take the required measures if a company has any of the following organisational defects:

<sup>483</sup> Inserted by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

1. The company lacks any of the required corporate bodies.
2. A required corporate body of the company is not composed correctly.
3. The company is not keeping the share register or the register of its reported beneficial owners in accordance with the regulations.<sup>484</sup>

The court may in particular:

1. allow the company a period of time, under threat of its dissolution, within which to re-establish the lawful situation;
2. appoint the required corporate body or an administrator;
3. dissolve the company and order its liquidation according to the regulations on insolvency proceedings.<sup>485</sup>

<sup>2</sup> If the court appoints the required corporate body or an administrator, it determines the duration for which the appointment is valid. It requires the company to bear the costs and to make an advance payment to the appointed persons.

<sup>3</sup> If there is good cause, the company may request the court to remove the persons the court has appointed.

## Section Four: Reduction of the Share Capital

### Art. 732

A. Resolution to reduce the capital

<sup>1</sup> Where a company limited by shares intends to reduce its share capital without simultaneously replacing the decrease with new, fully paid-up capital, the general meeting must pass a resolution to amend the articles of association accordingly.

<sup>2</sup> The resolution may be adopted only where it has been ascertained by means of a special audit report that the claims of the company's creditors are fully covered despite the reduction in the share capital. The audit report must be prepared by a licensed audit expert. The licensed

<sup>484</sup> Amended by No I 1 of the FA of 21 June 2019 on the Implementation of the Recommendations of the Global Forum on Transparency and the Exchange of Information for Tax Purposes, in force since 1 Nov. 2019 (AS 2019 3161; BBl 2019 279). When the Amendment of 17 March 2017 of the CO (Commercial Register Law) comes into force (BBl 2017 2433), para. 1 is amended in accordance with No II of this Amendment.

<sup>485</sup> Inserted by No I 1 of the FA of 21 June 2019 on the Implementation of the Recommendations of the Global Forum on Transparency and the Exchange of Information for Tax Purposes, in force since 1 Nov. 2019 (AS 2019 3161; BBl 2019 279).

audit expert must be present at the general meeting which adopts the resolution.<sup>486</sup>

<sup>3</sup> The resolution must contain the results of the audit report and the method by which the capital reduction is to be carried out.<sup>487</sup>

<sup>4</sup> Any book profit arising from the capital reduction must be used solely for write-downs.

<sup>5</sup> The share capital may be reduced below 100,000 francs only if it is at the same time replaced by new fully paid-up capital of at least 100,000 francs.<sup>488</sup>

#### Art. 732<sup>a</sup><sup>489</sup>

B. Cancellation of shares in the event of restructuring

<sup>1</sup> If the share capital is reduced to zero for the purpose of restructuring measures and then increased again, the current membership rights of the shareholders lapse at the time of the reduction. Issued shares must be cancelled.

<sup>2</sup> When the share capital is increased again, the former shareholders have subscription rights that may not be withdrawn from them.

#### Art. 733

B. Call on creditors<sup>490</sup>

If the general meeting passes a resolution to reduce the share capital, the board of directors must give public notice of the resolution three times in the Swiss Official Gazette of Commerce as well as in the form envisaged in the articles of association and announce to the creditors that within two months commencing with the third publication in the Swiss Official Gazette of Commerce that they may register their claims to be satisfied or secured.

<sup>486</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>487</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>488</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>489</sup> Inserted by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>490</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

**Art. 734**

C. Implementa-  
tion of the  
reduction<sup>491</sup>

The reduction of the share capital may be carried out only after the time limit set for the creditors has expired and the registered claims have been satisfied or secured and may be entered in the commercial register only when it has been verified by public deed that the provisions of this Section are fulfilled. The deed must be enclosed with the special audit report.<sup>492</sup>

**Art. 735**

D. Reduction in  
the case of  
negative net  
worth<sup>493</sup>

The call to creditors and the satisfaction or securing of their claims may be omitted where the share capital is to be reduced in order to correct a situation of negative net worth caused by losses by an amount not exceeding such losses.

**Section Five: Dissolution of a Company Limited by Shares****Art. 736**

A. Dissolution in  
general  
I. Grounds

The company is dissolved:

1. in accordance with the articles of association;
2. by resolution of the general meeting, to be recorded in a public deed;
3. by the commencement of insolvency proceedings;
- 4.<sup>494</sup> by court judgment if shareholders together representing at least ten per cent of the share capital request its dissolution for good cause. The court may order a different solution if appropriate and conscionable for the interested parties;
5. in the other cases envisaged by law.

<sup>491</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>492</sup> Second sentence Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>493</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>494</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).



**Art. 737**<sup>495</sup>

II. Notification for entry in the commercial register

Where the company is dissolved for reasons other than insolvency or a court judgment, the board of directors notifies the dissolution for entry in the commercial register.

**Art. 738**<sup>496</sup>

III. Consequences

The dissolved company enters into liquidation, with the exception of cases involving a merger, a split or the transfer of its assets to a public sector corporation.

**Art. 739**

B. Dissolution with liquidation  
I. Consequences of liquidation; powers

<sup>1</sup> A company entering into liquidation retains its legal personality and its existing business name, albeit with the words “in liquidation” appended to it, until such time as its assets have been distributed among the shareholders.

<sup>2</sup> As of the company’s entry into liquidation, the powers of its governing officers are limited to such actions as are necessary to carry out the liquidation but which by their nature may not be performed by the liquidators.

**Art. 740**

II. Appointment and dismissal of the liquidators  
I. Appointment<sup>497</sup>

<sup>1</sup> The liquidation is carried out by the board of directors, unless the articles of association or a resolution by the general meeting delegate it to other persons.

<sup>2</sup> The board of directors notifies the liquidators for entry in the commercial register, even where the liquidation is carried out by the board of directors.

<sup>3</sup> At least one of the liquidators must be resident in Switzerland and authorised to represent the company.<sup>498</sup>

<sup>4</sup> Where the company is dissolved by court judgment, the court appoints the liquidators.<sup>499</sup>

<sup>495</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>496</sup> Amended by Annex No 2 of the Mergers Act of 3 Oct. 2003, in force since 1 July 2004 ((AS 2004 2617; BBl 2000 4337).

<sup>497</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>498</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>499</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>5</sup> In the event of insolvency, the insolvency administrators carry out the liquidation in accordance with the provisions of insolvency law. The governing officers of the company retain their authority to represent the company only to the extent such representation is still necessary.

**Art. 741**<sup>500</sup>

2. Dismissal

<sup>1</sup> The general meeting may dismiss the liquidators it appointed at any time.

<sup>2</sup> On application by a shareholder, the court may dismiss liquidators and appoint others as necessary for good cause.

**Art. 742**

III. Liquidation process  
1. Balance sheet, call on creditors

<sup>1</sup> On taking up their office, the liquidators must draw up a balance sheet.

<sup>2</sup> The creditors are informed of the dissolution of the company and requested to register their claims, by separate letter in the case of creditors identifiable from the accounting records or in some other manner, and by public announcement in the Swiss Official Gazette of Commerce as well as in the form envisaged in the articles of association in the case of unknown creditors and those whose address is not known.

**Art. 743**

2. Other duties

<sup>1</sup> The liquidators must wind up the current business, call in any still outstanding share capital, realise the company's assets and perform its obligations, providing the balance sheet and the call to creditors do not indicate overindebtedness.

<sup>2</sup> Where they ascertain that the company is overindebted, they must immediately notify the court; the latter then declares the commencement of insolvency proceedings.

<sup>3</sup> The liquidators must represent the company in all transactions carried out for liquidation purposes and are entitled to conduct legal actions, reach settlements, conclude arbitration agreements and even, where required for liquidation purposes, to effect new transactions.

<sup>4</sup> They may also dispose of assets by private sale, unless the general meeting has instructed otherwise.

<sup>5</sup> Where the liquidation lasts for an extended period, they must draw up interim balance sheets every year.

<sup>500</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>6</sup> The company is liable for any loss or damage resulting from unauthorised acts by a liquidator in the exercise of his duties.

#### Art. 744

3. Protection of creditors

1 Where known creditors have failed to register their claims, the amount thereof must be deposited with the court.

2 Similarly, the amount of claims not yet due from the company and of disputed obligations of the company must be deposited with the court unless the creditors are furnished with security in an equivalent amount or the distribution of the company's assets is suspended until such obligations have been performed.

#### Art. 745

4. Distribution of assets

1 Unless the articles of association provide otherwise, once the debts of the dissolved company have been discharged, its assets are distributed among the shareholders in proportion to the amounts they contributed and with due regard to the preferential rights attaching to specific share classes.<sup>501</sup>

2 The distribution may take place no sooner than one year after the day on which the call to creditors was made for the third time.

3 Such distribution may take place after only three months where a licensed audit expert confirms that the debts have been redeemed and that in the circumstances it may safely be assumed that no third party interests will be harmed.<sup>502</sup>

#### Art. 746

IV. Deletion from the commercial register

On completion of the liquidation process, the liquidators apply to the commercial registry for the deletion of the business name.

#### Art. 747<sup>503</sup>

V. Retention of the share register, accounting records and register

1 The share register, the accounting records and the register under Article 697I and the underlying documents must be kept in a safe place for ten years following the deletion of the company. This place shall be decided by the liquidators or if they are unable to agree, by the commercial registry.

<sup>501</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>502</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>503</sup> Amended by No I 2 of the FA of 12 Dec 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS 2015 1389; BBl 2014 605).

<sup>2</sup> The share register and the register must be retained in such a manner that they can be accessed at any time in Switzerland.

**Art. 748–750**<sup>504</sup>

C. Dissolution  
without liquidation  
I. ...

**Art. 751**

II. Takeover by a  
public sector  
corporation

<sup>1</sup> Where the assets of a company limited by shares are taken over by the Confederation, by a canton or, under guarantee from the canton, by a district or commune, with the consent of the general meeting it may be agreed that no liquidation take place.

<sup>2</sup> The resolution of the general meeting must be made in accordance with the provisions governing dissolution and notified to the commercial registry.

<sup>3</sup> On entry of the resolution in the commercial register, the transfer of the company's assets and debts is complete and the company's name must be deleted.

**Section Six: Liability**

**Art. 752**<sup>505</sup>

A. Liability  
I. For the issue  
prospectus

Where information that is inaccurate, misleading or in breach of statutory requirements is given in issue prospectuses or similar statements disseminated when the company is established or on the issue of shares, bonds or other securities, any person involved whether wilfully or through negligence is liable to the acquirers of such securities for the resultant losses.

**Art. 753**<sup>506</sup>

II. Founder  
members'  
liability

Founder members, members of the board of directors and all persons involved in establishing the company are liable both to the company and to the individual shareholders and creditors for the losses arising where they

<sup>504</sup> Repealed by Annex No 2 of the Mergers Act of 3 Oct. 2003, with effect from 1 July 2004 (AS **2004** 2617; BBl **2000** 4337).

<sup>505</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS **1992** 733; BBl **1983** II 745).

<sup>506</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS **1992** 733; BBl **1983** II 745).

1. wilfully or negligently conceal, disguise or give inaccurate or misleading information on contributions in kind, acquisitions in kind or the granting of special privileges to shareholders or other persons in the articles of association, the statutory report or a capital increase report or otherwise act unlawfully in approving such a measure;
2. wilfully or negligently induce the entry of the company in the commercial register on the basis of a certificate or deed containing inaccurate information;
3. knowingly contribute to the acceptance of subscriptions from insolvent persons.

**Art. 754**<sup>507</sup>

III. Liability for administration, business management and liquidation

<sup>1</sup> The members of the board of directors and all persons engaged in the business management or liquidation of the company are liable both to the company and to the individual shareholders and creditors for any losses or damage arising from any intentional or negligent breach of their duties.

<sup>2</sup> A person who, as authorised, delegates the performance of a task to another governing officer is liable for any losses caused by such officer unless he can prove that he acted with all due diligence when selecting, instructing and supervising him.

**Art. 755**<sup>508</sup>

IV. Auditors' liability

All persons engaged in auditing the annual and consolidated accounts, the company's establishment, a capital increase or a capital reduction are liable both to the company and to the individual shareholders and creditors for the losses arising from any intentional or negligent breach of their duties.

<sup>2</sup> If the audit is conducted by a public audit office or by one of its employees, the relevant public authority is liable. Legal action against persons involved in the audit is governed by public law.<sup>509</sup>

<sup>507</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>508</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>509</sup> Inserted by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

**Art. 756**<sup>510</sup>

B. Damage to the company  
I. Claims outside insolvency

<sup>1</sup> In addition to the company, the individual shareholders are also entitled to sue for any losses caused to the company. The shareholder's claim is for performance to the company.

<sup>2</sup> ...<sup>511</sup>

**Art. 757**<sup>512</sup>

II. Claims in insolvency

<sup>1</sup> In the event of the insolvency of the damaged company, its creditors are entitled to request that the company be compensated for the losses suffered. However, in the first instance the insolvency administrators may assert the claims of the shareholders and the company's creditors.

<sup>2</sup> Where the insolvency administrators waive their right to assert such claims, any shareholder or creditor is entitled to bring them. The proceeds are first used to satisfy the claims of the litigant creditors in accordance with the provisions of the Debt Collection and Bankruptcy Act of 11 April 1889<sup>513</sup>. Any surplus is divided among the litigant shareholders in proportion to their equity participation in the company; the remainder is added to the insolvent's estate.

<sup>3</sup> The assignment of claims held by the company in accordance with Article 260 of the Debt Collection and Bankruptcy Act of 11 April 1889 is reserved.

**Art. 758**<sup>514</sup>

III. Effect of the resolution of release

<sup>1</sup> The resolution of release adopted by the general meeting is effective only for disclosed facts and only as against the company and those shareholders who approved the resolution or who have since acquired their shares in full knowledge of the resolution.

<sup>2</sup> The right of action of the other shareholders lapses six months after the resolution of release.

**Art. 759**<sup>515</sup>

C. Joint and several liability and recourse

<sup>1</sup> Where two or more persons are liable for the losses, each is jointly and severally liable with the others to the extent that the damage is

<sup>510</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>511</sup> Repealed by Annex 1 No II 5 of the Civil Procedure Code of 19 Dec 2008, with effect from 1 Jan 2011 (AS 2010 1739; BBl 2006 7221).

<sup>512</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>513</sup> SR 281.1

<sup>514</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>515</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

personally attributable to him on account of his own fault and the circumstances.

<sup>2</sup> The claimant may bring action against several persons jointly for the total losses and request that the court determine the liability of each individual defendant in the same proceedings.

<sup>3</sup> The right of recourse among several defendants is determined by the court with due regard to all the circumstances.

#### **Art. 760**

##### D. Time limits

<sup>1</sup> The claim for damages against any person held liable pursuant to the provisions above becomes time-barred five years after the date on which the injured party learned of the losses and of the person liable for it but in any event ten years after the date of the act which caused the losses.

<sup>2</sup> Where the action stems from a criminal act for which criminal law provides for a longer time limit, the latter also applies to the civil claim.

#### **Art. 761**<sup>516</sup>

### **Section Seven: Involvement of Public Sector Corporations**

#### **Art. 762**

<sup>1</sup> Where public sector corporations such as the Confederation, or a canton, district or commune have a public interest in a company limited by shares, the articles of association of the company may grant that corporation the right to appoint representatives to the board of directors or the external auditors, even if it is not a shareholder.<sup>517</sup>

<sup>2</sup> In such companies and in public-private enterprises in which a public sector corporation participates as a shareholder, only the public sector corporation has the right to dismiss the representatives it appointed to the board of directors and the external auditors.

<sup>3</sup> The members of the board of directors and external auditors appointed by a public sector corporation have the same rights and duties as those elected by the general meeting.<sup>518</sup>

<sup>516</sup> Repealed by Annex No 5 of the Civil Jurisdiction Act of 24 March 2000, with effect from 1 Jan 2001 (AS 2000 2355; BBl 1999 2829).

<sup>517</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>518</sup> Amended by No I of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>4</sup> The public sector corporation is liable to the company, shareholders and creditors for the actions of the members of the board of directors and external auditors it appoints, subject to rights of recourse under federal and cantonal law.

## **Section Eight: Exclusion of Application of the Code to Public-Sector Entities**

### **Art. 763**

<sup>1</sup> The provisions governing the company limited by shares are not applicable to companies and entities established by special cantonal legislation and partly administered by the public authorities, such as banks, insurance or electricity companies, even if their capital is entirely or partly divided into shares and was raised with the help of private individuals, providing the canton assumes secondary liability for the obligations of such companies and entities.

<sup>2</sup> The provisions governing the company limited by shares are not applicable to companies and entities established by special cantonal legislation prior to 1 January 1883 and partly administered by the public authorities even if the canton does not assume secondary liability for their obligations.

## **Title Twenty-Seven: The Partnership limited by Shares**

### **Art. 764**

#### A. Definition

<sup>1</sup> A partnership limited by shares is a partnership whose capital is divided into shares and in which one or more partners have unlimited joint and several liability to its creditors in the same manner as partners in a general partnership.

<sup>2</sup> Unless otherwise provided, the provisions governing companies limited by shares apply to partnerships limited by shares.

<sup>3</sup> Where the capital of a partnership limited by shares is not divided into shares but into portions which merely define the degree of participation of two or more limited partners, the provisions governing limited partnerships apply.

### **Art. 765**

#### B. Directors I. Designation and powers

<sup>1</sup> The partners with unlimited liability constitute the directors of the partnership limited by shares. They are responsible for business management and representation. They must be named in the articles of association.



<sup>2</sup> The names of the directors and persons authorised to represent the partnership and their addresses, places of origin and function must be entered in the commercial register.<sup>519</sup>

<sup>3</sup> Any changes to the body of partners with unlimited liability require the consent of the existing partners and the amendment of the articles of association.

### Art. 766

II. Approval of resolutions of the general meeting

Resolutions of the general meeting concerning modification of the partnership's purpose, extension or curtailment of its areas of business and continuation of the partnership beyond the duration specified in the articles of association require the consent of the directors.

### Art. 767

III. Withdrawal of authority to manage business and represent the partnership

<sup>1</sup> Authority to manage business and represent the partnership may be withdrawn from directors on the same conditions as apply to general partnerships.

<sup>2</sup> If removed, a director no longer has unlimited liability for the future obligations of the partnership.

### Art. 768

C. Supervisory board  
I. Appointment and powers

<sup>1</sup> Responsibility for monitoring and continuous supervision of the management of the partnership's business is allocated to a supervisory board, to which the articles of association may allocate further responsibilities.

<sup>2</sup> The partnership's directors have no right to vote on the appointment of the supervisory board.

<sup>3</sup> The particulars of the members of the supervisory board must be entered in the commercial register.

### Art. 769

II. Liability action

<sup>1</sup> On behalf of the partnership, the supervisory board may hold the directors to account and take action against them before the courts.

<sup>2</sup> In the event of malicious conduct by the directors, the supervisory board is entitled to take legal action against them even if this is contradictory to a resolution of the general meeting.

<sup>519</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

**Art. 770**

D. Dissolution <sup>1</sup> The partnership is terminated by the departure, death, incapacity or bankruptcy of all the partners with unlimited liability.

<sup>2</sup> In other respects, dissolution of the partnership limited by shares is governed by the same provisions as apply to the dissolution of companies limited by shares; however, it may be dissolved by resolution of the general meeting before the date set in the articles of association only with the consent of the directors.

<sup>3</sup> ...<sup>520</sup>

**Art. 771**

E. Resignation <sup>1</sup> A partner with unlimited liability has the same right to resign as a partner in a general partnership.

<sup>2</sup> Where one of two or more partners with unlimited liability exercises his right to resign, unless the articles of association provide otherwise the partnership is continued by the others.

## **Title Twenty-Eight:<sup>521</sup> The Limited Liability Company**

### **Section One: General Provisions**

**Art. 772**

A. Definition <sup>1</sup> A limited liability company is an incorporated company with separate legal personality in which one or more persons or commercial enterprises participate. Its nominal capital is specified in the articles of association. It is liable for its obligations to the extent of the company assets.

<sup>2</sup> Each company member participates in the nominal capital by making at least one capital contribution. The articles of association may stipulate obligations to make additional financial and material contributions.

**Art. 773**

B. Nominal capital The nominal capital must amount to at least 20,000 francs.

<sup>520</sup> Repealed by Annex No 2 of the Mergers Act of 3 Oct. 2003, with effect from 1 July 2004 (AS 2004 2617; BBl 2000 4337).

<sup>521</sup> Amended by No I 2 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

**Art. 774**

C. Capital contributions

<sup>1</sup> The nominal value of the capital contribution must be at least 100 francs. In the event of restructuring, it may be reduced to one franc.

<sup>2</sup> Capital contributions must be paid up to at least their nominal value.

**Art. 774a**

D. Profit sharing certificates

The articles of association may provide for the creation of profit sharing certificates; the corresponding provisions for companies limited by shares apply.

**Art. 775**

E. Company members

A limited liability company may be established by one or more natural persons or legal entities or other commercial enterprises.

**Art. 776**F. Articles of association  
I. Content prescribed by law

The articles of association must contain provisions on:

1. the business name and seat of the company;
2. the objects of the company;
3. the amount of nominal capital and of the number and nominal value of the capital contributions;
4. the form of the company's external communications.

**Art. 776a**

II. Conditional requirements as to content

In order to be binding, provisions on the following matters must be included in the articles of association:

1. the grounds and terms for making additional financial and material contributions;
2. the grounds for and the terms of first option, pre-emption and purchase rights of company members or the company in relation to the capital contributions;
3. prohibition of competition clauses applicable to company members;
4. contractual penalties to ensure the fulfilment of obligations imposed by law or the articles of association;
5. preferential rights that are tied to individual classes of capital contributions (preferential capital contributions);
6. company members' rights to veto resolutions of the members' general meeting;

7. restrictions on the voting rights of company members and their rights to appoint representatives;
8. profit-sharing certificates;
9. reserves in accordance with the articles of association;
10. powers accorded to the members' general meeting that go beyond its statutory responsibilities;
11. the approval by the members' general meeting of certain decisions made by the managing directors;
12. the requirement of the consent of the members' general meeting to the designation of natural persons to exercise management rights for company members that are the legal entities or commercial enterprises;
13. the power of the managing director to appoint managers, authorised signatories and authorised officers;
14. the payment of shares of profits to the managing directors;
15. interest paid to company members until commencement of the company's operations;
16. the organisation and duties of the auditor, where these go beyond those prescribed by law;
17. the granting of a right to resign under the articles of association, the conditions for exercising the same and the severance payment to be made;
18. special reasons for excluding company members from the company;
19. grounds for dissolution that differ from the statutory grounds.

<sup>2</sup> In order to be binding, provisions on the following matters that differ from the statutory regulations must also be included in the articles of association:

1. resolutions on the subsequent creation of new preferential capital contributions;
2. the transfer of capital contributions;
3. the convening of the members' general meeting;
4. the allocation of voting rights to company members;
5. resolutions passed in the members' general meeting;
6. decisions made by the managing director;
7. management and the representation;
8. prohibition of competition clauses applicable to the managing directors.

**Art. 777**

G. Establishment  
I. Certificate of  
incorporation

<sup>1</sup> The company is established when the founder members declare in public deed that they are founding a limited liability company, lay down the articles of association and appoint the management bodies.

<sup>2</sup> In the certificate of incorporation, the founder members subscribe for the capital contributions and state that:

1. all capital contributions are validly subscribed for;
2. the capital contributions correspond to their total issue price;
3. the statutory requirements and requirements of the articles of association for the payment of the capital contributions are fulfilled;
4. they accept the obligations in terms of the articles of association to make additional financial or material contributions.

**Art. 777a**

II. Subscription  
for capital  
contributions

<sup>1</sup> In order to be valid, the subscription deed for the capital contributions must indicate the number, nominal value and issue price as well as the class of capital contribution if applicable.

<sup>2</sup> In the subscription deed, reference must be made to the provisions of the articles of association on:

1. obligations to make additional financial contributions;
2. obligations to make further material contributions;
3. prohibition of competition clauses applicable to company members;
4. first option, pre-emption and purchase rights of company members or the company;
5. contractual penalties.

**Art. 777b**

III. Documents

<sup>1</sup> In the certificate of incorporation, the notary must specify the foundation documents individually and confirm that they have been laid before him and the founder members.

<sup>2</sup> The following documents must be appended to the certificate of incorporation:

1. the articles of association;
2. the incorporation report;
3. the audit confirmation;
4. confirmation that the capital contributions have been deposited in cash;

5. the agreements on contributions-in-kind;
6. existing agreements on acquisitions-in-kind.

**Art. 777c**

IV. Capital contributions

<sup>1</sup> On foundation, a cash deposit corresponding to the full issue price must be made for each capital contribution.

<sup>2</sup> In addition, the provisions on companies limited by shares apply to:

1. the specification of contributions in kind, acquisitions in kind and the special privileges in the articles of association;
2. the entry of details of contributions in kind, acquisitions in kind and of special privileges in the commercial register;
3. the payment and audit of capital contributions.

**Art. 778**

H. Entry in the commercial register  
I. Company

The company must be entered in the commercial register at the place where it has its seat.

**Art. 778a**

II. Branch offices

Branch offices must be entered in the commercial register of the place where they are located.

**Art. 779**

J. Acquisition of legal personality  
I. Time; Failure to meet requirements

<sup>1</sup> The company acquires legal personality through entry in the commercial register.

<sup>2</sup> It also acquires legal personality even if the requirements for registration are not in fact fulfilled.

<sup>3</sup> Where the requirements of the law or the articles of association are not fulfilled on establishment and if the interests of creditors or company members are substantially jeopardised or harmed thereby, the court may order the dissolution of the company at the request of a creditor or member.

<sup>4</sup> The right to take legal action lapses three months after notice is published of the establishment of the company in the Swiss Official Gazette of Commerce.

**Art. 779a**

II. Obligations entered into before registration

<sup>1</sup> Persons who act on behalf of the company before it is entered in the commercial register are personally and jointly and severally liable for their acts.

<sup>2</sup> Where the company accepts obligations within three months of its registration that were expressly entered into in its name, the persons so acting are relieved of liability and only the company is liable.

### **Art. 780**

K. Amendment of the articles of association

A resolution of the members' general meeting on an amendment to the articles of association must be publicly certified and entered in the commercial register.

### **Art. 781**

L. Increase in the nominal capital

<sup>1</sup> The members' general meeting may resolve to increase the nominal capital.

<sup>2</sup> The implementation of the resolution is the responsibility of the managing directors.

<sup>3</sup> Subscription and the capital contributions are governed by the regulations on the establishment of the company. The relevant regulations on increasing the capital of a company limited by shares also apply to the subscription form. A public invitation to subscribe to the capital contributions is not permitted.

<sup>4</sup> An application to register the increase in the nominal capital must be filed with the commercial register within three months of the resolution of the members' general meeting, otherwise the resolution becomes invalid.

<sup>5</sup> In addition, the corresponding provisions on an ordinary increase in capital for a company limited by shares apply to:

1. the form and content of the resolution of the members' general meeting;
2. the subscription rights of company members;
3. an increase in the company capital from equity capital;
4. the report on the increase in capital and the audit confirmation;
5. the amendment of the articles of association and the declarations made by the managing directors;
6. the registration of the increase in nominal capital in the commercial register and the nullity of official documents issued previously.

### **Art. 782**

M. Reduction of the nominal capital

<sup>1</sup> The members' general meeting may resolve to reduce the nominal capital.

<sup>2</sup> Under no circumstances may the nominal capital be reduced below 20,000 francs.

<sup>3</sup> In order to eliminate a deficit balance caused by losses, the nominal capital may be reduced only if the company members have paid the additional financial contributions provided for in the articles of association in full.

<sup>4</sup> In addition, the relevant regulations on the reduction of the capital of a company limited by shares apply.

### Art. 783

N. Acquisition of own capital contributions

<sup>1</sup> A company may acquire its own capital contributions only if freely disposable equity capital of a value equivalent to the required funds is available and the total nominal value of these capital contributions does not exceed ten per cent of the nominal capital.

<sup>2</sup> Where capital contributions are acquired in connection with a restriction on transfer or the departure or exclusion of a member, the maximum amount that may be acquired is 35 per cent. The capital contributions in excess of 10 per cent of the nominal capital must be sold within two years or cancelled by means of a reduction in capital.

<sup>3</sup> Where the capital contributions that are to be acquired are tied to an obligation to make additional financial or material contributions, this must be cancelled before acquisition.

<sup>4</sup> In addition, the relevant regulations on the acquisition by a company limited by shares of its own shares apply to the acquisition by a limited liability company of its own capital contributions.

## Section Two: Rights and Obligations of Company Members

### Art. 784

A. Capital contributions  
I. Official document

<sup>1</sup> Where an official document is issued in respect of capital contributions, this may only take the form of a document in proof or registered security.

<sup>2</sup> The official document must bear the same information on rights and obligations under the articles of association as the document on subscription to the capital contribution.

### Art. 785

II. Transfer  
1. Assignment  
a. Form

<sup>1</sup> The assignment of a capital contribution as well as an obligation to assign must be done in writing.

<sup>2</sup> The contract of assignment must contain the same information on rights and obligations under the articles of association as the document on subscription to the capital contribution.



**Art. 786**

b. Consent requirements

<sup>1</sup> An assignment of a capital contribution requires the consent of the members' general meeting. The members' general meeting may refuse consent without stating its reasons.

<sup>2</sup> The articles of association may deviate from the foregoing by:

1. waiving the requirement of consent to the assignment;
2. stating the grounds justifying refusal of consent to the assignment;
3. providing that consent to the assignment may be refused if the company offers to acquire the capital contribution from the seller at its true value;
4. prohibiting any assignment;
5. providing that consent to the assignment may be refused if there is doubt that obligations under the articles of association to make additional financial or material contributions will be fulfilled and security requested by the company is not provided.

<sup>3</sup> Where the articles of association prohibit assignment or the members' general meeting refuses to consent to the assignment, the right to resign for good cause is reserved.

**Art. 787**

c. Transfer of rights

<sup>1</sup> Where the consent of the members' general meeting is required for the assignment of capital contributions, assignment becomes legally effective only when this consent is granted.

<sup>2</sup> If the members' general meeting fails to refuse consent to the assignment within six months of its receipt, consent is deemed to have been granted.

**Art. 788**

2. Special forms of acquisition

<sup>1</sup> Where capital contributions are acquired through inheritance, distribution of an estate, matrimonial property law or enforcement proceedings, all related rights and obligations are transferred to the acquirer without requiring the consent of the members' general meeting.

<sup>2</sup> In order to exercise voting rights and related rights, however, the acquirer requires the recognition of the members' general meeting as a company member who is eligible to vote.

<sup>3</sup> The members' general meeting may refuse such recognition only if the company offers to acquire the capital contributions from the acquirer at their true value. The offer may be made for the company's own account or for the account of other company members or third

parties. Unless the acquirer rejects the offer within a month of receiving notice of the true value, the offer is deemed to be accepted.

<sup>4</sup> Unless the members' general meeting rejects the request for recognition within six months of its receipt, recognition is deemed to be granted.

<sup>5</sup> The articles of association may waive the requirement of recognition.

### **Art. 789**

3. Determining the true value

<sup>1</sup> If the law or the articles of association stipulate that the true value of the capital contributions should be determined, the parties may request the court to make the valuation.

<sup>2</sup> The court allocates the costs of the proceedings and the valuation at its discretion.

### **Art. 789a**

4. Usufruct

<sup>1</sup> The creation of a usufruct over capital contributions is governed by the regulations on the transfer of capital contributions.

<sup>2</sup> If the articles of association prohibit assignment, then the creation of a usufruct over capital contributions is also prohibited.

### **Art. 789b**

5. Charge

<sup>1</sup> The articles of association may provide that the creation of a charge over capital contributions requires the consent of the members' general meeting. This may refuse its consent only for good cause.

<sup>2</sup> If the articles of association prohibit assignment, then the creation of a charge over capital contributions is also prohibited.

### **Art. 790**

III. Register of contributions

<sup>1</sup> The company keeps a register of capital contributions. It must be kept in such a manner that it can be accessed at any time in Switzerland.<sup>522</sup>

<sup>2</sup> The following information must be entered in the register of contributions:

1. the names and addresses of the company members;
2. the number, the nominal value and, if applicable, the class of the capital contributions of each company member;
3. the names and addresses of usufructuaries;

<sup>522</sup> Second sentence inserted by No 12 of the FA of 12 Dec 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS 2015 1389; BBl 2014 605).

4. the names and addresses of charge creditors.

<sup>3</sup> Company members not entitled to exercise voting rights and related rights must be specifically indicated as company members without the right to vote.

<sup>4</sup> Company members have the right to inspect the register of contributions.

<sup>5</sup> The documents on which an entry is based must be retained for ten years following the deletion of the person concerned from the register of capital contributions.<sup>523</sup>

#### Art. 790a<sup>524</sup>

III<sup>bis</sup>. Notice of the beneficial owner of the capital contributions

Any person who alone or by agreement with third parties acquires capital contributions and thus reaches or exceeds the threshold of 25 per cent of the nominal capital or voting rights must within one month give notice to the company of the first name and surname and the address of the natural person for whom it is ultimately acting (the beneficial owner).

<sup>2</sup> If the company member is a legal entity or partnership, each natural person that controls the company member in analogous application of Article 963 paragraph 2 must be recorded as a beneficial owner. If there is no such person, the company member must give notice of this to the company.

<sup>3</sup> If the company member is a company whose participation rights are listed on a stock exchange, if the company member is controlled by such a company in accordance with Article 963 paragraph 2, or if the company member controls such a company in this sense, it must only give notice of this fact and provide details of the company's name and registered office.

<sup>4</sup> The company member must within three months give notice to the company of any change to the first name or surname or the address of the beneficial owner.

<sup>5</sup> The provisions of the law on companies limited by shares relating to the register of beneficial owners (Art. 697l) and the consequences of failing to comply with the obligations to give notice (Art. 697m) apply *mutatis mutandis*.

<sup>523</sup> Inserted by No I 2 of the FA of 12 Dec 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force (AS 2015 1389; BBl 2014 605). Amended by No I 1 of the FA of 21 June 2019 on the Implementation of the Recommendations of the Global Forum on Transparency and the Exchange of Information for Tax Purposes, in force since 1 Nov. 2019 (AS 2019 3161; BBl 2019 279).

<sup>524</sup> Inserted by No I 2 of the FA of 12 Dec 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS 2015 1389; BBl 2014 605).

**Art. 791**

IV. Entry in the commercial register

<sup>1</sup> The name, address and place of origin of company members, together with the number and the nominal value of their capital contributions must be entered in the commercial register.

<sup>2</sup> The company must give notice of registration.

**Art. 792**

V. Common property

Where a capital contribution has two or more holders:

1. they must designate one person as their representative; they may exercise the rights conferred by the capital contribution only through this person;
2. they are jointly and severally liable in respect of obligations to make additional financial and material contributions.

**Art. 793**

B. Payment of capital contributions

<sup>1</sup> The company members are obliged to make a payment corresponding to the issue price of their capital contributions.

<sup>2</sup> The payments may not be refunded.

**Art. 794**

C. Liability the company members

The company is liable for its obligations to the extent of the company assets only.

**Art. 795**

D. Additional financial and material contributions  
I. Additional financial contributions  
1. Principle and amount

<sup>1</sup> The articles of association may require the company members to make additional capital contributions.

<sup>2</sup> If the articles of association provide for an obligation to make additional financial contributions, they must stipulate the amount of additional capital that may be required to be paid for each capital contribution. This may not exceed twice the nominal value of the capital contribution.

<sup>3</sup> The company members are liable only to the extent of the additional financial contributions to be made on their own capital contributions.

**Art. 795a**

2. Call for additional financial contributions

<sup>1</sup> Additional financial contributions are called in by the managing directors.

<sup>2</sup> They may be called in only if:

1. the sum of the nominal capital and statutory reserves is no longer covered;

2. the company is unable to continue its business affairs in the proper manner without the additional funds;
3. the company requires equity capital for reasons specified in the articles of association.

<sup>3</sup> Additional financial contributions fall due for payment if the company is declared bankrupt.

#### **Art. 795b**

3. Repayment Additional financial contributions may only be refunded in full or in part if the amount is covered by freely disposable equity capital and a licensed audit expert confirms the same in writing.

#### **Art. 795c**

4. Reduction <sup>1</sup> An obligation under the articles of association to make additional financial contributions may be reduced or abolished only if the nominal capital and the statutory reserves are fully covered.
- <sup>2</sup> The relevant regulations on the reduction of the nominal capital apply.

#### **Art. 795d**

5. Continuation <sup>1</sup> Company members who resign from the company remain subject to the obligation to make additional financial contributions for three further years subject to the following conditions. The time of resignation is determined by the entry in the commercial register.
- <sup>2</sup> Company members who have been excluded must only make additional financial contributions if the company is declared bankrupt.
- <sup>3</sup> Their obligation to make additional financial contributions lapses insofar as it has been fulfilled by a legal successor.
- <sup>4</sup> The extent of the obligation of company members who have resigned to make additional financial contributions may not be increased.

#### **Art. 796**

- II. Further material contributions <sup>1</sup> The articles of association may require company members to make further material contributions.
- <sup>2</sup> They may require further material contributions only if this serves the objects of the company, the maintenance of its independence or the preservation of the composition of the groups of company members.
- <sup>3</sup> The object and extent and other essential points according to circumstances of any obligation to make further material contributions related to a capital contribution must be specified in the articles of association.

Reference may be made to the regulations of the members' general meeting for more precise details.

<sup>4</sup> Obligations under the articles of association to pay money or provide other assets are subject to the provisions on additional financial contributions if no appropriate consideration is provided for and the call for additional contributions serves to cover equity capital requirements.

**Art. 797**

III. Retrospective introduction

The retrospective introduction or amendment of obligations to make additional financial or material contributions under the articles of association requires the consent of all the company members concerned.

**Art. 798**

E. Dividends, interest, shares of profits

<sup>1</sup> Dividends may only be paid from the balance sheet profit and from reserves formed for that purpose.

I. Dividends

<sup>2</sup> The dividend may only be determined once the allocations to the reserves required by law and by the articles of association have been deducted.

<sup>3</sup> The dividends must be determined in proportion to the nominal value of the capital contributions; if additional financial contributions have been made, this amount must be added to the nominal value in order to determine the dividends; the articles of association may provide for a different arrangement.

**Art. 798a**

II. Interest

<sup>1</sup> No interest may be paid on the nominal capital and additional financial contributions made.

<sup>2</sup> The payment of interest to company members prior to commencement of the company's operations is permitted. The corresponding provisions of the law on companies limited by shares on interest paid to company members prior to commencement of the company's operations apply

**Art. 798b**

III. Shares of profits

The articles of association may provide for the payment of shares of profits to managing directors. The corresponding provisions of the law on companies limited by shares on the payment of shares of profits to managing directors apply.

**Art. 799**

F. Preferential capital contributions

The corresponding provisions of the law on companies limited by shares on preference shares apply to preferential capital contributions.

**Art. 800**

G. Refund of payments

The corresponding provisions of the law on companies limited by shares apply to the refund of payments made by the company to company members, managing directors and persons closely related thereto.

**Art. 801**<sup>525</sup>

H. Reserves

The relevant provisions of the law on companies limited by shares apply to the reserves.

**Art. 801a**

J. Notification of the annual report

<sup>1</sup> The annual report and the audit report must be sent to company members at the latest together with the invitation to the annual members' general meeting.

<sup>2</sup> The company members may request that they be sent the version of the annual report that they have approved after members' general meeting.

**Art. 802**

K. Right to information and to inspect documents

<sup>1</sup> Any company member may request the managing directors to provide information on any company matter.

<sup>2</sup> Unless the company has an auditor, company members have unrestricted access to the company books and files. If the company has an auditor, the books and files may be inspected only if a legitimate interest is credibly demonstrated.

<sup>3</sup> If there is a risk that a company member may use the information obtained for non-company purposes that may be detrimental to the company, the managing directors may refuse to provide information and allow access to the extent required; if the company member so requests, the members' general meeting decides on the matter.

<sup>4</sup> If the members' general meeting refuses to provide information or allow access without justification, the court may issue the relevant order at the request of the company member.

<sup>525</sup> Amended by No I 3 of the FA of 23 Dec 2011 (Financial Reporting Law), in force since 1 Jan 2013 (AS 2012 6679; BBl 2008 1589).

L. Duty of  
loyalty and  
prohibition of  
competition

### Art. 803

- <sup>1</sup> Company members are obliged to safeguard business secrets.
- <sup>2</sup> They must refrain from doing anything detrimental to the interests of the company. In particular, they may not carry on business that brings them a special advantage but which adversely affects the objects of the company. The articles of association may provide that company members be prohibited from carrying on any activities in competition with the company.
- <sup>3</sup> The company members may carry on any activities that are contrary to the duty of loyalty or a prohibition of competition provided all the other company members consent in writing. The articles of association may provide that the consent of the members' general meeting be required instead.
- <sup>4</sup> The special regulations on prohibition of competition clauses applicable to managing directors are reserved.

## Section Three: Organisation of the Company

### Art. 804

A. Members'  
general meeting  
I. Responsibilities

- <sup>1</sup> The supreme governing body of the company is the members' general meeting.
- <sup>2</sup> The members' general meeting has the following inalienable powers:
1. to amend the articles of association;
  2. to appoint and the remove the managing directors;
  3. to appoint and remove the members of the auditor;
  - 4.<sup>526</sup> to approve the management report and the consolidated accounts;
  5. to approve the annual accounts and the resolution on the allocation of the balance sheet profit, and in particular to set the dividend and the shares of profits paid to managing directors;
  6. to determine the fees paid to managing directors;
  7. to discharge the managing directors;
  8. to consent to the assignment of capital contributions or to recognise company members as having the right to vote;

<sup>526</sup> Amended by No I 3 of the FA of 23 Dec 2011 (Financial Reporting Law), in force since 1 Jan 2013 (AS 2012 6679; BBl 2008 1589).



9. to consent to the creation of a charge over capital contributions where the articles of association so provide;
10. to pass resolutions on the exercise under the articles of association of rights of first option, pre-emption or purchase;
11. to authorise the managing director to acquire the company's own capital contributions for the company or to approve such an acquisition;
12. to issue detailed regulations on obligations to make additional material contributions where the articles of association make reference to such regulations;
13. to consent to the activities of the managing directors or company members that are contrary to the duty of loyalty or the prohibition of competition, where the articles of association waive the requirement of the consent of all company members;
14. to decide on whether an application should be made to the court to exclude a company member for good cause;
15. to exclude a company member on grounds provided for in the articles of association;
16. to dissolve the company;
17. to approve transactions carried out by the managing directors that require the consent of the members' general meeting under the articles of association;
18. to decide on matters that are reserved to the members' general meeting by law or by the articles of association or which are placed before it by the managing directors.

<sup>3</sup> The members' general meeting appoints the managers, the authorised signatories and authorised officers. The articles of association may also grant these powers to the managing directors.

### **Art. 805**

#### II. Convening and conduct of the meeting

<sup>1</sup> The members' general meeting is convened by the managing directors, or if necessary by the auditors. The liquidators also have the right to convene a members' general meeting.

<sup>2</sup> The annual meeting is held every year within six months of the end of the financial year. Extraordinary meetings are convened in accordance with the articles of association or as required.

<sup>3</sup> The members' general meeting must be convened 20 days at the latest before the date of the meeting. The articles of association may extend this period or reduce it to no less than ten days. The possibility of a universal meeting is reserved.

<sup>4</sup> Resolutions may also be done in writing unless a company members requests an oral discussion.

<sup>5</sup> In addition, the relevant provisions on the company limited by shares apply to:

1. convening the meeting;
2. the right of company members to convene a meeting and table motions;
3. the business to be discussed;
4. motions;
5. universal meetings;
6. preparatory measures;
7. the minutes;
8. the representation of company members;
9. the participation of unauthorised persons.

### **Art. 806**

#### III. Voting rights 1. Determination

<sup>1</sup> The voting rights of company members are determined by the nominal value of their capital contributions. Each company member has at least one vote. The articles of association may limit the number of votes allocated to the owner of several capital contributions.

<sup>2</sup> The articles of association may specify that voting rights are not dependent on nominal value with the result that each capital contribution carries one vote. In this case, the capital contributions with the lowest nominal value must be worth at least one tenth of the nominal value of the other capital contributions.

<sup>3</sup> The determination of the voting rights according to the number of capital contributions does not apply to:

1. the appointment of the members of the auditor;
2. the appointment of experts to inspect management practices or individual parts thereof;
3. the resolution on raising a liability action.

### **Art. 806a**

#### 2. Exclusion of the right to vote

<sup>1</sup> In the case of resolutions on the discharge of the managing directors, persons who have participated in management in any way are not permitted to vote.

<sup>2</sup> In the case of resolutions on the acquisition of its own capital contribution by the company, company members who are relinquishing their capital contributions are not permitted to vote.

<sup>3</sup> In the case of resolutions on consenting to activities of a company member that are contrary to the duty of loyalty or the prohibition of competition, the person concerned is not permitted to vote.

**Art. 806b**

3. Usufruct      In the case of a usufruct over a capital contribution, the usufructuary has the right to vote and related rights. He is liable to the owner in damages if he fails to give due consideration to the interests of the owner when exercising his rights.

**Art. 807**

- IV. Right of veto
- <sup>1</sup> The articles of association may grant company members a right of veto over certain resolutions of the members' general meeting. They must detail the decisions to which the right of veto applies.
- <sup>2</sup> The retrospective introduction of a right of veto requires the consent of all company members.
- <sup>3</sup> The right of veto may not be transferred.

**Art. 808**

- V. Resolutions
1. In general      The members' general meeting passes resolutions and conducts its elections by an absolute majority of the votes represented, unless the law or articles of association provide otherwise.

**Art. 808a**

2. Casting vote      The chair of the members' general meeting has the casting vote. The articles of association may provide otherwise.

**Art. 808b**

3. Important resolutions
- <sup>1</sup> A resolution of the members' general meeting passed by a majority of at least two thirds of the votes represented and an absolute majority of the entire nominal capital in respect of which a right to vote may be exercised is required in the case of:
1. the amendment of the objects of the company;
  2. the introduction of capital contributions with preferential voting rights;
  3. an increase in or easing of the restrictions on or the prohibition of the transferability of capital contributions;
  4. consent to the assignment of capital contributions or recognition as a company member who is entitled to vote;
  5. an increase in the nominal capital;

6. the restriction or revocation of subscription rights;
7. consent to activities of the managing director or company members that are contrary to the duty of loyalty or the prohibition of competition;
8. an application to the court to exclude a company member for good cause;
9. the exclusion of a company member on the grounds specified in the articles of association planned;
10. the relocation of the seat of the company;
11. the dissolution the company.

<sup>2</sup> Provisions of the articles of association stipulating larger majorities than those required by law for certain resolutions may only be introduced if approved by the planned majority.

#### **Art. 808c**

VI. Contesting resolutions of the members' general meeting

The relevant provisions on companies limited by shares apply to the contesting of resolutions of the members' general meeting.

#### **Art. 809**

B. Management and representation

I. designation the managing director and organisation

<sup>1</sup> The company members are jointly responsible for the management of the company. The articles of association may adopt alternative provisions on management.

<sup>2</sup> Only natural persons may be appointed as managing directors. Where a legal entity or a commercial enterprise is a participant in the company, if applicable it appoints a natural person to exercise this function in its stead. The articles of association may require the consent of the members' general meeting for this.

<sup>3</sup> Where a company has two or more managing directors, the members' general meeting must appoint a chairman.

<sup>4</sup> Where a company has two or more managing directors, they decide by a majority of the votes cast. The chairman has the casting vote. The articles of association may adopt alternative provisions on decision making by the managing directors.

#### **Art. 810**

II. Duties of the managing directors

<sup>1</sup> The managing directors are responsible for all matters not assigned by law or the articles of association to the members' general meeting.

<sup>2</sup> Subject to the reservation of the following provisions, the managing directors have the following inalienable and irrevocable duties:

1. the overall management of the company and issuing the required directives;
2. determining the organisation in accordance with the law and the articles of association;
3. organising the accounting, financial control and financial planning systems as required for the management of the company;
4. supervising of the persons who are delegated management responsibilities, in particular with regard to compliance with the law, articles of association, regulations and directives;
5. the preparation of the annual report (annual accounts, management report and if applicable consolidated accounts);
6. the preparation for the members' general meeting as well as the implementation of its resolutions;
7. the notification of the court in the event that the company is overindebted.

<sup>3</sup> The chairman of the management board or if applicable the sole managing director has the following duties:

1. to convene and chair the members' general meeting;
2. to issue communications to the company members;
3. to ensure the required notifications are made to the commercial register.

### Art. 811

III. Approval by the members' general meeting

<sup>1</sup> The articles of association may provide that the managing directors:

1. submit certain decisions to the members' general meeting for approval;
2. may submit individual matters to the members' general meeting for approval.

<sup>2</sup> Approval by the members' general meeting does not restrict the liability of the managing directors.

### Art. 812

IV. Duty of care and of loyalty; prohibition of competition

<sup>1</sup> The managing directors and third parties who are involved in management must carry out their duties with all due care and safeguard the interests of the company in good faith.

<sup>2</sup> They are subject to the same duty of loyalty as the company members.

<sup>3</sup> They may not carry on any activities in competition with the company unless the articles of association provide otherwise or all other company members consent to the activity in writing. The articles of

association may provide that the consent of the members' general meeting be required.

### Art. 813

V. Equal treatment

The managing directors and third parties who are involved in management must treat company members equally under the same circumstances.

### Art. 814

VI. Representation

<sup>1</sup> Each managing director has the right to represent the company.

<sup>2</sup> The articles of association may adopt alternative provisions on representation, but at least one managing director must be authorised to represent the company. The articles of association may refer to regulations that set out the details.

<sup>3</sup> The company must be able to be represented by a person who is resident in Switzerland. This person must be a managing director or a manager. They must have access to the register of capital contributions and to the register of beneficial owners under Article 697l.<sup>527</sup>

<sup>4</sup> The relevant provisions on companies limited by shares apply to the extent of and restrictions on the right to act as a representative and to contracts between the company and the person that is representing it.

<sup>5</sup> The persons authorised to represent the company must sign on its behalf by appending their signature to the business name.

<sup>6</sup> They must be entered in the commercial register. They must enter their own signatures in person at the office of the commercial registrar or submit these in a duly authenticated form.

### Art. 815

VII. Removal of managing directors;  
Revocation of the right to represent the company

<sup>1</sup> The members' general meeting may remove managing directors that it has appointed at any time.

<sup>2</sup> Any company member may request the court to revoke or restrict the right of a managing director to manage or represent the company where there is good cause, and in particular if the person concerned has seriously breached his obligations or is no longer able to manage the company competently.

<sup>3</sup> The managing directors may at any time suspend managers, authorised signatories or authorised officers in their capacity.

<sup>527</sup> Amended by No I 2 of the FA of 12 Dec 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS 2015 1389; BBl 2014 605).

<sup>4</sup> If these persons have been appointed by the members' general meeting, a members' general meeting must be convened without delay.

<sup>5</sup> Claims for compensation made by persons who have been removed or suspended are reserved.

#### **Art. 816**

VIII. Nullity of decisions

Decisions made by the managing directors are subject mutatis mutandis to the same grounds for nullity as resolutions of the general meeting of a company limited by shares.

#### **Art. 817**

IX. Liability

The company is liable for losses or damage caused by unauthorised acts carried out in the exercise of his business activities by a person authorised to manage or represent the company.

#### **Art. 818**

C. Auditor

<sup>1</sup> The relevant provisions on companies limited by shares apply to the auditor.

<sup>2</sup> A company member subject to an obligation to make additional financial contributions may request an ordinary audit of the annual accounts.

#### **Art. 819**

D. Defects in the organisation the company

The relevant provisions on companies limited by shares apply to defects in the organisation the company.

#### **Art. 820**

E. Loss of capital and overindebtedness

<sup>1</sup> The relevant provisions on companies limited by shares apply to the duty to notify in the event of a loss of capital or the overindebtedness of the company and to the commencement and stay of bankruptcy proceedings.

<sup>2</sup> The court may stay bankruptcy proceedings at the request of the managing directors or of a creditor, in particular if outstanding additional capital contributions will be paid without delay and there is a prospect of restructuring.

## Section Four: Dissolution and Resignation

### Art. 821

#### A. Dissolution I. Grounds

<sup>1</sup> A limited liability company must be dissolved:

1. if ground for dissolution stated in the articles of association applies;
2. if the members' general meeting so resolves;
3. if bankruptcy proceedings are commenced;
4. in the other cases provided for by the law.

<sup>2</sup> If the members' general meeting resolves to dissolve the company, the resolution must be in the form of a public deed.

<sup>3</sup> Any company member may request the court to dissolve the company for good cause. Instead of dissolution, the court may opt for an alternative solution that is appropriate and reasonable for the persons concerned, such as the payment of a financial settlement to the company member requesting dissolution commensurate with the true value of his capital contribution.

### Art. 821a

#### II. Consequences

<sup>1</sup> The relevant provisions on companies limited by shares apply to the consequences of dissolution.

<sup>2</sup> The dissolution of a company must be entered in the commercial register. Where dissolution is ordered by the court, the court must notify the commercial register without delay. Where dissolution is on other grounds, the company must notify the Commercial Register.

### Art. 822

#### B. Resignation of company members

##### I. Resignation

<sup>1</sup> A company member may apply to the court to for leave to resign for good cause.

<sup>2</sup> The articles of association may grant company members the right to resign and make this subject to certain conditions.

### Art. 822a

#### II. Follow-up resignations

<sup>1</sup> Where a company member files an action for leave to resign for good cause or a company member tenders his resignation based on a right of resignation under the articles of association, the managing directors must notify the other company members without delay.

<sup>2</sup> If other company members within three months of receipt of such notice file an action for leave to resign for good cause or exercise a right of resignation under the articles of association, all departing company members must be treated equally in proportion to the nomi-



nal value of their capital contributions. Where additional financial contributions have been made, the value thereof must be added to the nominal value.

### **Art. 823**

- III. Exclusion
- <sup>1</sup> Where there is good cause, the company may apply to the court for the exclusion of a company member.
  - <sup>2</sup> The articles of association may provide that the members' general meeting company may exclude members from the company on specific grounds.
  - <sup>3</sup> The regulations on follow-up resignations do not apply.

### **Art. 824**

- IV. Interim measures
- In proceedings relating to the withdrawal of a company member, the court may at the request of a party order that individual or all membership rights and obligations the person concerned be suspended.

### **Art. 825**

- V. Financial settlement
1. Entitlement and amount
- <sup>1</sup> Where a company member leaves the company, he is entitled to a financial settlement that reflects the true value of his capital contributions.
  - <sup>2</sup> Where the company member leaves by exercising a right of resignation under the articles of association, the articles of association may adopt different provisions on compensation.

### **Art. 825a**

2. Payment
- <sup>1</sup> The financial settlement becomes due for payment when the company members leaves, provided the company:
    1. has disposable equity capital;
    2. is able to dispose of the capital contributions of the departing member;
    3. is entitled to reduce its nominal capital in compliance with the relevant provisions.
  - <sup>2</sup> A licensed audit expert must establish the extent of the disposable equity capital. If this is insufficient to pay the financial settlement, he must state his opinion on the extent to which the nominal capital could be reduced.
  - <sup>3</sup> The former company member holds a non-interest-bearing subordinate ranking claim in respect of any portion of the financial settlement that is not paid out. This becomes due for payment to the extent that

disposable equity capital is declared to be available in the annual annual report.

<sup>4</sup> For as long as the financial settlement has not been paid in full, the former company member may request that the company appoint an auditor and arrange for an ordinary audit of the annual accounts.

### **Art. 826**

C. Liquidation

<sup>1</sup> Each company member has the right to a share of the proceeds of liquidation corresponding to fraction that nominal value of his capital contribution represents of the nominal capital. Where additional financial contributions have been made and not refunded, their value must be added to the capital contributions of the company member concerned and to the nominal capital. The articles of association may adopt an alternative provision.

<sup>2</sup> The relevant provisions on companies limited by shares apply to the dissolution of a company with liquidation.

## **Section Five: Liability**

### **Art. 827**

The relevant provisions on companies limited by shares apply to the liability of persons who are involved in the establishment, management, auditing or liquidation of a limited liability company.

## **Title Twenty-Nine: The Cooperative**

### **Section One: Definition and Establishment**

#### **Art. 828**

A. Cooperatives under the Code of Obligations

<sup>1</sup> A cooperative is a corporate entity consisting of an unlimited number of persons or commercial enterprises who join together for the primary purpose of promoting or safeguarding the specific economic interests of the society's members by way of collective self-help.

<sup>2</sup> Cooperatives with a predetermined nominal capital are not permitted.

#### **Art. 829**

B. Cooperatives under public law

Associations of persons under public law are governed by federal and cantonal public law even where formed to pursue cooperative purposes.

**Art. 830**

C. Establishment  
I. Requirements  
1. In general

The cooperative is established by entry in the commercial register once the articles of association have been drawn up and approved by the constituent assembly.

**Art. 831**

2. Number of  
members

<sup>1</sup> At least seven members must be involved in the establishment of a cooperative.

<sup>2</sup> Where the number of members subsequently drops below the minimum number, the provisions of the law on companies limited by shares on defects in the organisation of a company apply.<sup>528</sup>

**Art. 832**

II. Articles of  
association  
1. Content  
prescribed by  
law

The articles of association must contain provisions concerning:

1. the name (business name) and seat of the cooperative;
2. the objects of the cooperative;
3. any obligation on members to make cash or other contributions and the nature and amount thereof;
- 4.<sup>529</sup> the governing bodies for the administration and for auditing and the manner in which it is to be represented;
5. the form of the cooperative's external communications.

**Art. 833**

2. Further  
provisions

In order to be binding, provisions on the following matters must be included in the articles of association:

1. creation of the cooperative's nominal capital by means of cooperative shares (share certificates);
2. contributions in kind to the cooperative's nominal capital, the nature and imputed value thereof and the requirements pertaining to the person of the contributor;
3. assets taken over on establishment of the society, the remuneration for such assets and the requirements pertaining to the person of their owner;

<sup>528</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>529</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 479 ; BBl 2002 3148, 2004 3969).

4. accession to the cooperative and loss of membership, where such rules differ from the statutory provisions;
5. members' personal liability and their liability to make additional contributions;
6. the organisation and representation of the society, amendment of its articles of association and the adoption of resolutions by the general assembly, where such rules differ from the statutory provisions;
7. restrictions on or extensions of the exercise of members' voting rights;
8. the calculation and allocation of net profit and the liquidation surplus.

#### Art. 834

III. Constituent assembly

<sup>1</sup> The articles of association are drawn up in writing and submitted to an assembly convened by the founder members for consultation and approval.

<sup>2</sup> Further, a written report by the founder members on any contributions in kind and assets to be taken over is made available to the assembly for consultation.

<sup>3</sup> This assembly also appoints the necessary governing bodies.

<sup>4</sup> Until the cooperative has been entered in the commercial register, the membership may be established only by signing the articles of association.

#### Art. 835<sup>530</sup>

IV. Entry in the commercial register

1. Cooperative

The cooperative is entered in the commercial register of the place at which it has its seat.

#### Art. 836<sup>531</sup>

2. Branch offices

Branch offices are entered in the commercial register of the place where they are located.

<sup>530</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>531</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

**Art. 837**<sup>532</sup>

3. Register of members

1 The cooperative shall keep a register in which the first name and surname or the business name of the members and their addresses are recorded. It must keep the register in such a manner that it can be accessed at any time in Switzerland.

2 The documents on which an entry is based must be retained for ten years following the deletion of the member concerned from the register.

**Art. 838**

V. Acquisition of legal personality

1 The cooperative acquires legal personality only through entry in the commercial register.

2 A person acting in the name of the cooperative prior to entry in the commercial register is liable personally and jointly and severally for his actions.

3 Where such obligations were entered into expressly in the name of the cooperative to be established and are assumed by the latter within three months of its entry in the commercial register, the persons who contracted them are released and only the cooperative is liable.

**Section Two: Acquisition of Membership****Art. 839**

A. General principle

1 New members may be accepted into a cooperative at any time.

2 Providing the principle of unlimited membership is respected, the articles of association may lay down more detailed provisions governing accession; however, they must not impose excessive obstacles to accession.

**Art. 840**

B. Declaration of accession

1 Accession requires a written declaration.

2 Where, in addition to being liable with its assets, a cooperative provides for personal liability or the liability to make additional contributions on the part of the individual members, the declaration of accession must state such obligations expressly.

<sup>532</sup> Amended by No I 2 of the FA of 12 Dec 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS 2015 1389; BBl 2014 605).

<sup>3</sup> The directors decide on acceptance of new members, unless under the articles of association, a mere declaration of accession is sufficient or a resolution of the general assembly is required.

#### **Art. 841**

C. In connection with an insurance policy

<sup>1</sup> Where membership of the cooperative is linked with taking out an insurance policy with such society, membership is acquired on acceptance of the insurance application by the competent governing body.

<sup>2</sup> Insurance policies concluded by a licensed insurance cooperative with its members are subject to the Federal Act of 2 April 1908<sup>533</sup> on Insurance Policies in the same manner as insurance policies concluded with third parties.

### **Section Three: Loss of Membership**

#### **Art. 842**

A. Departure  
I. Freedom to leave

<sup>1</sup> Provided no resolution has been made to dissolve the cooperative, every member is free to leave.

<sup>2</sup> The articles of association may provide that the departing member is obliged to pay an appropriate severance penalty where in the circumstances his departure causes the cooperative significant losses or jeopardises its continued existence.

<sup>3</sup> Any permanent ban on or excessive obstacle to departure imposed by the articles of association or by agreement is void.

#### **Art. 843**

II. Restriction of departure

<sup>1</sup> A member may be barred from leaving by the articles of association or by agreement for no more than five years.

<sup>2</sup> Even during this period a member may leave for good cause. The obligation to pay an appropriate severance penalty on the same conditions as apply to members with an unrestricted right of departure is reserved.

#### **Art. 844**

III. Notice and timing of departure

<sup>1</sup> Members may leave only at the end of the financial year and on expiry of one year's notice.

<sup>2</sup> The articles of association may stipulate a shorter notice period and may permit departures in the course of the financial year.

<sup>533</sup> SR 221.229.1

**Art. 845**

IV. Exercise in  
bankruptcy and  
attachment

Where the articles of association grant a departing member a share of the cooperative's assets, a bankrupt member's right to leave may be exercised by the bankruptcy administrators or, if his share has been attached, by the debt collection office.

**Art. 846**

B. Exclusion

1 The articles of association may stipulate the grounds on which a member may be excluded.

2 Moreover, a member may be excluded at any time for good cause.

3 Exclusions are decided by the general assembly. The articles of association may stipulate that the directors are responsible, in which case the excluded member has right of recourse to the general assembly. A member may appeal against his exclusion to the courts within three months.

4 The excluded member may be required to pay an appropriate severance penalty on the same conditions as apply to members with an unrestricted right of departure.

**Art. 847**

C. Death of a  
member

1 Membership lapses on the death of the member.

2 However, the articles of association may stipulate that his heirs automatically become members of the cooperative.

3 Further, the articles of association may stipulate that the heirs or one of two or more heirs must, on written request, be recognised as member in place of the deceased member.

4 The community of heirs must appoint a joint representative to act as a member of the cooperative.

**Art. 848**

D. Lapse of  
office, employ-  
ment or contract

Where membership of a cooperative is linked to the holding of an office or an employment relationship or is the result of a contractual relationship, as in the case of an insurance cooperative, unless the articles of association provide otherwise, membership lapses on termination of such office, employment or contract.

**Art. 849**

E. Transfer of  
membership  
I. In general

1 The assignment of shares in the cooperative and, where a certificate is issued as proof of membership or such share, the transfer of this certificate do not automatically make the acquirer a member. He becomes a member only after the existing members have passed a

resolution of acceptance as required by law and the articles of association.

<sup>2</sup> Until such time as the acquirer becomes a member, the alienator is entitled to exercise his personal membership rights.

<sup>3</sup> Where membership of a cooperative is linked with a contract, the articles of association may stipulate that, if the contract is subsequently taken over, membership automatically passes to the legal successor.

#### **Art. 850**

II. By transfer of land or commercial exploitation

<sup>1</sup> The articles of association may make membership of a cooperative conditional on ownership or commercial exploitation of a property.

<sup>2</sup> In such cases the articles of association may stipulate that, in the event that the property or commercial operations change hands, membership automatically passes to the acquirer.

<sup>3</sup> A transfer of membership resulting from the alienation of property is valid as against third parties only if entered under priority notice in the land register.

#### **Art. 851**

F. Departure of the legal successor

In the case of transfer and inheritance of membership, the conditions for leaving the society are the same for the legal successor as for the former member.

### **Section Four: Rights and Obligations of the Members**

#### **Art. 852**

A. Proof of membership

<sup>1</sup> The articles of association may stipulate that a certificate be issued as proof of membership.

<sup>2</sup> Such proof may also be provided as part of the member's share certificate.

#### **Art. 853**

B. Share certificates

<sup>1</sup> Where a cooperative has shares, each member joining it must take at least one.

<sup>2</sup> The articles of association may stipulate that multiple shares may be acquired, up to a specified maximum.

<sup>3</sup> Share certificates are made out in the member's name. However, they may not be made out in the form of negotiable securities, but only as documents in proof.



**Art. 854**

C. Equality      The members all have equal rights and obligations, unless the law makes an exception.

**Art. 855**

D. Rights  
I. Voting right      The rights of members to participate in the affairs of the cooperative, in particular with regard to the management of its business and the promotion of the society's interests, are exercised by taking part in the general assembly of members or, where prescribed by law, in ballots.

**Art. 856**

II. Control by the members  
I. Disclosure of the balance sheet      1 No later than ten days prior to the general assembly of members or the ballot to decide on approval of the management report, the consolidated accounts and the annual accounts, these documents together with the audit report must be made available at the seat of the cooperative for inspection by its members.<sup>534</sup>

2 The articles of association may stipulate that each member is entitled, at his own expense, to request a copy of the profit and loss account and the balance sheet from the cooperative.

**Art. 857**

2. Release of information      1 The members may draw the attention of the auditor to dubious procedures and request the necessary information.<sup>535</sup>

2 The society's ledgers and business correspondence may be inspected only with the express authorisation of the general assembly of members or by resolution of the directors and if measures are taken to safeguard trade secrets.

3 The court may order the cooperative to provide the members with information on significant matters relevant to the exercise of their right of control in the form of authenticated copies from its ledgers or correspondence. The court order must not jeopardise the interests of the cooperative.

4 The members' right of control may not be excluded or restricted either by the articles of association or by resolutions made by a governing body of the society.

<sup>534</sup> Amended by No I 3 of the FA of 23 Dec 2011 (Financial Reporting Law), in force since 1 Jan 2013 (AS 2012 6679; BBI 2008 1589).

<sup>535</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBI 2002 3148, 2004 3969).

**Art. 858**<sup>536</sup>

III. Rights to  
share the net  
profit  
1. ...

**Art. 859**

2. Profit  
distribution  
principles

<sup>1</sup> Unless the articles of association provide otherwise, any net profit on the cooperative's business operations passes in its entirety to the society's assets.

<sup>2</sup> Where distribution of the net profit among the members is provided for, unless the articles of association dictate otherwise, it is distributed according to the use of the society's facilities by individual members.

<sup>3</sup> Where share certificates exist, the portion of the net profit paid out on them must not exceed the usual rate of interest for long-term loans without special security.

**Art. 860**

3. Duty to form  
and accumulate a  
reserve fund

<sup>1</sup> Where the net profit is used for a purpose other than to build up the society's assets, each year one twentieth of it must be allocated to a reserve fund. Such allocations must be made for at least 20 years; where share certificates exist, they must in any event be made until the reserve fund is equal to one-fifth of the society's capital.

<sup>2</sup> The articles of association may stipulate that the reserve fund must be accumulated more rapidly.

<sup>3</sup> To the extent that the reserve fund does not exceed one-half of the society's other assets or, where share certificates exist, one-half of the society's capital, it may be used only to cover losses or for measures designed to sustain the society's pursuit of its objects in difficult times.

4 ...<sup>537</sup>

**Art. 861**

4. Net profit at  
credit coopera-  
tives

<sup>1</sup> Credit cooperatives may lay down articles of association that derogate from the provisions governing distribution of net profit contained in the previous articles, but they too are obliged to form a reserve fund and to use it in accordance with the above provisions.

<sup>2</sup> Each year at least one-tenth of the net profit must be allocated to the reserve fund until it equals one-tenth of the cooperative's nominal capital.

<sup>536</sup> Repealed by No I 3 of the FA of 23 Dec 2011 (Financial Reporting Law), with effect from 1 Jan 2013 (AS 2012 6679; BBl 2008 1589).

<sup>537</sup> Repealed by Annex No II 1 of the Insurance Oversight Act of 17 Dec 2004, with effect from 1 Jan 2006 (AS 2005 5269; BBl 2003 3789).

<sup>3</sup> Where a portion of the net profit is paid out to holders of shares in the cooperative and that portion exceeds the usual rate of interest for long-term loans without special security, one-tenth of the amount by which it exceeds the usual interest rate must likewise be allocated to the reserve fund.

### Art. 862

5. Welfare funds <sup>1</sup> The articles of association may also provide for allocations to establish and finance other funds, in particular funds dedicated to the welfare of employees of the company and related workers and for members of the cooperative.

2-4 ...<sup>538</sup>

### Art. 863

6. Further allocations to reserves

<sup>1</sup> Allocations to the reserve fund and other funds in accordance with the law and the articles of association are deducted in the first instance from the net profit available for distribution.

<sup>2</sup> Where it is deemed appropriate in order to secure the long-term health of the cooperative, the general assembly of members may also resolve to create reserves which are not envisaged by or meet higher requirements than are specified by the law or the articles of association.

<sup>3</sup> Similarly, contributions may be deducted from the net profit for the purpose of creating and financing welfare funds for employees, other workers and members or for other welfare purposes even where these are not envisaged in the articles of association; such contributions are subject to the provisions governing welfare funds established by the articles of association.

### Art. 864

IV. Entitlement to settlement  
1. Under the articles of association

<sup>1</sup> The articles of association determine whether the departing members or their heirs have claims on the society's assets and, if so, what those claims are. Such claims must be calculated on the basis of the net balance sheet assets excluding reserves at the time the member leaves the cooperative.

<sup>2</sup> The articles of association may grant the departing member or his heirs the right to the full or partial repayment of the value of his share

<sup>538</sup> Repealed by No I let. *b* of the FA of 21 March 1958, with effect from 1 July 1958 (AS 1958 379; BBl 1956 II 825).

certificate excluding the entry fee. They may stipulate that this repayment be deferred for up to three years after the member's departure.

<sup>3</sup> Even where the articles of association make no such provision, the cooperative remains entitled to defer the repayment for up to three years where it would cause the society considerable losses or jeopardise its continued existence. Any entitlement of the cooperative to a severance penalty paid by the departing member is unaffected by this provision.

<sup>4</sup> The claims of the departing member or his heirs become time-barred three years after the time at which the settlement becomes payable by the cooperative.

### **Art. 865**

#### 2. By law

<sup>1</sup> Where the articles of association make no provision for a settlement entitlement, departing members or their heirs have no such entitlement.

<sup>2</sup> Where the cooperative is dissolved within one year of the member's departure or death and the assets are distributed, the departed member or his heirs have the same entitlement as the members present on dissolution.

### **Art. 866**

#### E. Duties

##### I. Duty of loyalty

The members are obliged to safeguard the interests of the cooperative loyally and in good faith.

### **Art. 867**

#### II. Duty to make contributions

<sup>1</sup> The articles of association define the obligatory contributions.

<sup>2</sup> Where the members are obliged to pay in contributions on share certificates or to make other contributions, the cooperative must call them in by registered letter with an appropriate time limit for performance.

<sup>3</sup> Where no payment is forthcoming on first request and the member fails to comply within one month of a second call for payment, he may be declared to have forfeited his rights as member of the cooperative, providing he was previously warned of this consequence by registered letter.

<sup>4</sup> Unless the articles of association provide otherwise, the declaration of forfeiture does not release the member from obligations already due or falling due by virtue of his exclusion.

**Art. 868**

III. Liability  
1. Of the cooperative

The cooperative is liable with its assets for its obligations. It is liable exclusively, unless the articles of association provide otherwise.

**Art. 869**

2. Of the members  
a. Unlimited liability

<sup>1</sup> Except in the case of licensed insurance cooperatives, the articles of association may provide that, after the society's assets, the members have unlimited personal liability.

<sup>2</sup> Where this is the case and creditors suffer losses on the insolvency of the cooperative, the members are jointly and severally liable with their entire assets for all obligations of the society. Claims in respect of this liability are brought by the insolvency administrators until the insolvency proceedings are complete.

**Art. 870**

b. Limited liability

<sup>1</sup> Except in the case of licensed insurance cooperatives, the articles of association may provide that, after the society's assets, the members have limited personal liability for the cooperative's obligations above and beyond their membership contributions and the value of their cooperative shares, although only up to a specified amount.

<sup>2</sup> Where shares are held in the society, the amount for which the individual members are liable is determined by the value of their share.

<sup>3</sup> Claims in respect of this liability are brought by the insolvency administrators until the insolvency proceedings are complete.

**Art. 871**

c. Liability to make additional contributions

<sup>1</sup> Instead of or in addition to such liability, the articles of association may require the members to make additional contributions, which may be used only to cover net losses for the year.

<sup>2</sup> The liability to make additional contributions may be unlimited or else limited to specified amounts or to a specified proportion of the member's contribution or share in the society.

<sup>3</sup> Where the articles of association make no provision on how additional contributions are to be shared among the members, the amount due from each is determined according to the value of his share in the society or, where no such shares exist, on a per capita basis.

<sup>4</sup> The additional contributions may be called in at any time. If the cooperative is insolvent, the right to call in additional contributions accrues to the insolvency administrators.

<sup>5</sup> In other respects the provisions governing the calling-in of contributions and declaration of forfeiture are applicable.

**Art. 872**

d. Inadmissible restrictions

Any provisions made in the articles of association which limit liability to a specific time or to particular obligations or groups of members are void.

**Art. 873**

e. Procedure in insolvency

<sup>1</sup> In the event of the insolvency of a cooperative in which the members are personally liable or liable to make additional contributions, at the same time as they draw up the schedule of claims the insolvency administrators must determine and call in the provisional personal liability of each individual member or the additional contributions he must make.

<sup>2</sup> Irrecoverable amounts must be spread equally among the other members, and surpluses repaid once the final distribution plan has been formulated. The members' right of recourse against each other is reserved.

<sup>3</sup> The provisional determination of members' obligations and the distribution plan are subject to challenge by appeal on procedural grounds pursuant to the Debt Collection and Bankruptcy Act of 11 April 1889<sup>539</sup>.

<sup>4</sup> The procedure is determined by Federal Council ordinance.<sup>540</sup>

**Art. 874**

f. Amendment of liability provisions

<sup>1</sup> The provisions governing the personal liability or liability to make additional contributions of the members and the reduction or cancellation of share certificates may be amended only by amending the articles of association.

<sup>2</sup> Furthermore, the provisions governing reductions of share capital by companies limited by shares are applicable to any reduction or cancellation of share certificates.

<sup>3</sup> Any reduction of a member's personal liability or liability to make additional contributions has no effect on obligations that arose prior to publication of the amendment to the articles of association.

<sup>4</sup> Where a member's personal liability or liability to make additional contributions is established or increased, on entry of the resolution in the commercial register it works in favour of all creditors of the cooperative.

<sup>539</sup> SR 281.1

<sup>540</sup> Amended by No II 10 of the FA of 20 March 2008 on the Formal Revision of Federal Legislation, in force since 1 Aug. 2008 (AS 2008 3437 3452; BBl 2007 6121).

**Art. 875**

g. Liability of new members

<sup>1</sup> A person joining a cooperative in which the members are personally liable or liable to make additional contributions has the same liability as the other members for the society's obligations, including those that arose before he joined.

<sup>2</sup> Any contrary provision made in the articles of association or by agreement between the members has no effect as against third parties.

**Art. 876**

h. Liability after departure or dissolution

<sup>1</sup> Where a member with limited or unlimited liability leaves the society as a result of his death or some other reason, he remains liable for the obligations arising prior to his departure if the cooperative becomes insolvent within one year or any longer period stipulated in the articles of association of the date on which his departure was entered in the commercial register.

<sup>2</sup> Any liability to make additional contributions remains effective on the same conditions and subject to the same time limits.

<sup>3</sup> Where a cooperative is dissolved, the members likewise remain liable or obliged to make additional contributions if insolvency proceedings are commenced in respect of the cooperative within one year or any longer period stipulated in the articles of association of the date on which such dissolution was entered in the commercial register.

**Art. 877**

i. Notification of accessions and departures for entry in the commercial register

<sup>1</sup> Where the members have limited or unlimited liability for the society's debts or are liable to make additional contributions, the directors must notify every accession or departure of a member for entry in the commercial register within three months.

<sup>2</sup> Further, every departing or excluded member and the heirs of a member have the right to have the member's departure, exclusion or death entered in the register on their initiative. The commercial registry must immediately notify the society's directors of any such notification.

<sup>3</sup> Licensed insurance cooperatives are exempt from the duty to notify their members for entry in the commercial registrar.

**Art. 878**

k. Limitation periods for liability

<sup>1</sup> Creditors' claims in respect of the personal liability of individual members may be brought by any creditor at any time up to one year after completion of insolvency proceedings, unless the law provides for their extinction at an earlier juncture.

<sup>2</sup> The members' right of recourse against each other likewise becomes time-barred one year after the date of the payment to which the claim relates.

## Section Five: Organisation of the Cooperative

### Art. 879

A. General assembly of members  
I. Powers

<sup>1</sup> The supreme governing body of a cooperative is the general assembly of members.

<sup>2</sup> It has the following inalienable powers:

1. to determine and amend the articles of association;
- 2.<sup>541</sup> to elect the directors and the auditor;
- 3.<sup>542</sup> to approve the management report and the consolidated accounts;
4. to discharge the directors;
5. to make resolutions concerning the matters reserved to the general assembly of members by law or the articles of association.

### Art. 880

II. Ballot

In the case of cooperatives with more than 300 members or in which the majority of members are themselves cooperatives, the articles of association may stipulate that all or some of the powers of the general assembly of members be exercised by ballot.

### Art. 881

III. Convening the general assembly

1. Right and duty

<sup>1</sup> The general assembly of members is convened by the board of directors or any other governing body on which the articles of association confer such authority, and where necessary by the auditor.<sup>543</sup> The liquidators and the representatives of bond creditors also have the right to convene a general assembly.

<sup>541</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>542</sup> Amended by No I 3 of the FA of 23 Dec 2011 (Financial Reporting Law), in force since 1 Jan 2013 (AS 2012 6679; BBl 2008 1589).

<sup>543</sup> First sentence Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).



<sup>2</sup> The general assembly of members must be convened at the request of at least one-tenth of the members or, in the case of cooperatives with fewer than 30 members, at least three members.

<sup>3</sup> Where the board of directors fails to grant such a request within a reasonable delay, on application the court must order that a general assembly be convened.

#### **Art. 882**

2. Form

<sup>1</sup> The general assembly of members must be convened in the form prescribed by the articles of association but in any event no later than five days before the date for which it is scheduled.

<sup>2</sup> In the case of cooperatives with more than 30 members, the convocation is effective as soon as it is publicly announced.

#### **Art. 883**

3. Agenda items

<sup>1</sup> The notice convening the meeting must include the agenda items to be discussed and the essential content of any proposed amendments to the articles of association.

<sup>2</sup> No resolutions may be made on motions relating to agenda items that were not duly notified, except by means of a motion to convene a further general assembly.

<sup>3</sup> No advance notice is required to propose motions on duly notified agenda items and to debate items without passing resolutions.

#### **Art. 884**

4. Universal meeting

Where all the society's members are present they may, if no objection is raised, pass resolutions without needing to comply with the formal convocation requirements.

#### **Art. 885**

IV. Voting rights

Every member has one vote at the general assembly of members or in the ballot.

#### **Art. 886**

V. Representation

<sup>1</sup> A member may exercise his right to vote at the general assembly of members by appointing another member to act as proxy, but no proxy may represent more than one member.

<sup>2</sup> In the case of cooperatives with more than 1,000 members the articles of association may stipulate that each member may represent more than one other member but never more than nine.

<sup>3</sup> The articles of association reserve the right to permit representation of members by relatives with capacity to act.

### Art. 887

VI. Exclusion of voting rights

<sup>1</sup> In the case of resolutions concerning the discharge of the board of directors, persons who have participated in any manner in the management of the society's business have no voting right.

<sup>2</sup> ...<sup>544</sup>.

### Art. 888

VII. Resolutions  
1. In general

<sup>1</sup> Unless otherwise provided by law or the articles of association, the general assembly of members passes resolutions and decides elections by absolute majority of the votes cast. The same applies to resolutions and elections by ballot.

<sup>2</sup> The dissolution of the cooperative and any amendment of the articles of association require a majority of two-thirds of the votes cast. The articles of association may stipulate more restrictive conditions for such resolutions.<sup>545</sup>

### Art. 889

2. Increase of members' obligations

<sup>1</sup> Resolutions to introduce or increase the members' personal liability or their liability to make additional contributions require the consent of three-quarters of all members.

<sup>2</sup> Members who did not vote in favour are not bound by such resolutions providing they give notice of their departure from the society within three months of the publication of the resolution in question. Such departure takes effect as of the date on which the resolution comes into force.

<sup>3</sup> In such cases, departure may not be made conditional on payment of a severance penalty.

<sup>544</sup> Repealed by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), with effect from 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>545</sup> Amended by Annex No 2 of the Mergers Act of 3 Oct. 2003, in force since 1 July 2004 (AS 2004 2617; BBl 2000 4337).

**Art. 890**

VIII. Dismissal  
of the directors  
and the audi-  
tor<sup>546</sup>

1 The general assembly of members is entitled to dismiss the members of the board of directors and the auditor and any registered attorneys or commercial agents appointed by them.<sup>547</sup>

2 On application by at least one-tenth of the members, the court may order such dismissals where good cause exists and, in particular, where the persons in question neglected their duties or were unable to fulfil them. In such cases the court must, where necessary, order that fresh elections be held by the competent body of the cooperative and take appropriate measures for the interim.

3 The claims for compensation of persons thus dismissed are reserved.

**Art. 891**

IX. Challenging  
resolutions of the  
general assembly

1 The board of directors or any member may challenge resolutions made by the general assembly of members or by ballot which violate the law or the articles of association by bringing action against the cooperative before the court. Where the board of directors is the claimant, the court appoints a representative for the cooperative.

2 The right of challenge lapses where the action is not brought within two months of the adoption of the resolution.

3 A court judgment that annuls a resolution is effective for and against all the members.

**Art. 892**

X. Assembly of  
delegates

1 Cooperatives with more than 300 members or in which the majority of the members are cooperatives may delegate all or some of the powers of the general assembly of members to an assembly of delegates by means of the articles of association.

2 Rules governing the composition, election and convocation of the assembly of delegates are laid down in the articles of association.

3 Every delegate has one vote in the assembly of delegates, unless different provision for voting rights is made in the articles of association.

4 In other respects the statutory provisions governing the general assembly of members apply to the assembly of delegates.

<sup>546</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>547</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

XI. Exceptions  
for insurance  
cooperatives

### Art. 893

<sup>1</sup> Licensed insurance cooperatives with more than 1,000 members may delegate all or some of the powers of the general assembly of members to the board of directors by means of the articles of association.

<sup>2</sup> The powers of the general assembly of members to introduce or increase the members' liability to make additional contributions and to dissolve, merge, split and modify the legal form of the cooperative are not transferable.<sup>548</sup>

### Art. 894

B. Directors  
I. Eligibility  
1. Membership

<sup>1</sup> The board of directors of the cooperative consists of at least three persons; a majority of them must be members.

<sup>2</sup> Where a legal entity or commercial company holds a participation in the cooperative, it is not eligible as such to serve as a member of the board of directors; however, its representative may be elected in its stead.

### Art. 895<sup>549</sup>

2....

### Art. 896

II. Term of  
office

<sup>1</sup> The directors are elected for a maximum term of office of four years, but may be re-elected unless the articles of association provide otherwise.

<sup>2</sup> The provisions governing companies limited by shares apply to terms of office of directors of licensed insurance cooperatives.

### Art. 897

III. Administra-  
tive committees

The articles of association may delegate some of the duties and powers of the board of directors to one or more committees elected by the directors.

<sup>548</sup> Amended by Annex No 2 of the Mergers Act of 3 Oct. 2003, in force since 1 July 2004 (AS 2004 2617; BBl 2000 4337).

<sup>549</sup> Repealed by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), with effect from 1 Jan 2008 (AS 2007 4791 ; BBl 2002 3148, 2004 3969).

**Art. 898**<sup>550</sup>

IV. Business  
management and  
representation  
1. Delegation

<sup>1</sup> The articles of association may authorise the general assembly of members or the directors to delegate responsibility for managing the society's business or parts thereof and for representing the society to one or more persons, business managers or executive officers, who need not be members of the cooperative.

<sup>2</sup> A cooperative must be able to be represented by a person who is resident in Switzerland. This person must be a director, a business manager or an executive officer. This person must have access to the register under Article 837.<sup>551</sup>

**Art. 899**

2. Scope and  
restriction

<sup>1</sup> The persons with authority to represent the cooperative may carry out in its name any transactions conducive to the achievement of the cooperative's objects.

<sup>2</sup> Any restriction of such authority has no effect in relation to bona fide third parties, subject to any provisions entered in the commercial register that govern exclusive representation of the head office or a branch office or joint management of the society.

<sup>3</sup> The cooperative is liable for any damage resulting from unauthorised acts carried out in the exercise of his function by a person authorised to manage the cooperative's business or to represent it.

**Art. 899a**<sup>552</sup>

3. Contracts  
between the  
cooperative and  
its representa-  
tives

If the cooperative is represented in the conclusion of a contract by the same person with whom it is concluding the contract, the contract must be done in writing. This requirement does not apply to contract relating to everyday business where the value of the cooperative's goods or services does not exceed 1,000 francs.

<sup>550</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>551</sup> Amended by No I 2 of the FA of 12 Dec 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS 2015 1389; BBl 2014 605).

<sup>552</sup> Inserted by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

**Art. 900**

4. Signatures<sup>553</sup> The persons with authority to represent the cooperative must sign by appending their signature to the society's business name.

**Art. 901**

5. Entry<sup>554</sup> The board of directors must apply to have persons with authority to represent the cooperative entered in the commercial register and submit an authenticated copy of the relevant resolution. These persons must enter their own signatures in person at the commercial registry or submit these in a duly authenticated form.

**Art. 902**

- V. Duties  
1. In general <sup>1</sup> The directors must conduct the business of the cooperative with all diligence and employ their best endeavours to further the cooperative's cause.

<sup>2</sup> In particular, they have a duty:

1. to prepare the business of the general assembly of members and implement its resolutions;
2. to supervise the persons entrusted with the cooperative's business management and representation with regard to compliance with the law, the articles of association and any applicable regulations and to keep themselves regularly informed of the society's business performance.

<sup>3</sup> The directors are responsible for ensuring that the minutes of their meetings, the minutes of the general assembly, the necessary accounting records and the membership list are kept properly, that the profit and loss account and the annual balance sheet are drawn up and submitted to the auditor for examination in accordance with the statutory provisions and that the prescribed notifications concerning accessions and departures of members are made to the commercial registry.<sup>555</sup>

<sup>553</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>554</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>555</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

**Art. 903**

2. Duty to notify capital loss and overindebtedness

<sup>1</sup> Where there is good cause to suspect overindebtedness, the directors must immediately draw up an interim balance sheet at sale values.

<sup>2</sup> Where the last annual balance sheet and subsequent liquidation balance sheet or an interim balance sheet show that the claims of the society's creditors are no longer covered, the board of directors must notify the court. The court must commence insolvency proceedings, unless the requirements for a stay of such proceedings are fulfilled.

<sup>3</sup> In the case of cooperatives with share certificates, where the last annual balance sheet shows that one-half of the nominal capital is no longer covered, the directors must convene a general assembly of members without delay and inform the assembly of the situation.

<sup>4</sup> In the case of cooperatives whose members are liable to make additional contributions, the court need not be notified if the balance sheet loss is covered within three months by additional contributions from the members.

<sup>5</sup> On application by the board of directors or by a creditor, the court may grant a stay of insolvency proceedings where there is a prospect of financial restructuring. In this case, the court orders measures to preserve the society's assets, such as the taking of an inventory and the appointment of an administrative receiver.

<sup>6</sup> In the case of licensed insurance cooperatives, the members' claims under insurance policies count as creditors' rights.

**Art. 904**

VI. Return of payments to members

<sup>1</sup> In the event that the cooperative becomes insolvent, the members of the board of directors are obliged to reimburse the cooperative's creditors for all payments received in the three years prior to the onset of insolvency in the form of shares in the profit or under any other designation to the extent such payments exceed adequate remuneration for the consideration rendered and should not have been made under a prudent accounting regime.

<sup>2</sup> Such reimbursement is excluded to the extent that no claim for it exists under the provisions governing unjust enrichment.

<sup>3</sup> The court decides at its discretion, taking due account of all the circumstances.

**Art. 905**

VII. Dismissal and suspension

<sup>1</sup> The board of directors may at any time dismiss the committees, business managers, executive officers and other registered attorneys and commercial agents that it has appointed.

<sup>2</sup> The registered attorneys and commercial agents appointed by the general assembly of members may be suspended from their duties at any time by the board of directors, providing a general meeting is convened immediately.

<sup>3</sup> Claims for compensation made by persons dismissed or suspended are reserved.

**Art. 906**<sup>556</sup>

C. Auditor  
I. In general

<sup>1</sup> The auditor is governed by the corresponding provisions on companies limited by shares.

<sup>2</sup> An ordinary audit of the annual accounts may be requested by:

1. 10 per cent of the members;
2. members who together represent at least 10 per cent of the nominal capital;
3. members who personally liable or under an obligation to make additional capital contributions.

**Art. 907**<sup>557</sup>

II. Verification  
of the member-  
ship list

<sup>1</sup> In the case of cooperatives in which the members are personally liable or liable to make additional capital contributions, the auditor must verify that the membership list<sup>558</sup> has been kept correctly. If the cooperative has no auditor, the directors must arrange for the membership list<sup>559</sup> to be verified by a licensed auditor.

**Art. 908**<sup>560</sup>

D. Defects in  
organisation

In the case of defects in the organisation of a cooperative, the corresponding provisions on companies limited by shares apply.

<sup>556</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>557</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>558</sup> Revised by the Federal Assembly Drafting Committee (Art. 58 para. 1 ParlA; SR 171.10).

<sup>559</sup> Revised by the Federal Assembly Drafting Committee (Art. 58 para. 1 ParlA; SR 171.10).

<sup>560</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).



**Art. 909 and 910**<sup>561</sup>**Section Six: Dissolution of the Cooperative****Art. 911**

A. Grounds for dissolution

The cooperative is dissolved:

1. in accordance with the articles of association;
2. by resolution of the general assembly of members;
3. by commencement of insolvency proceedings;
4. in the other cases provided for by law.

**Art. 912**

B. Notification for entry in the commercial register

Where the company is dissolved for reasons other than insolvency, the board of directors notifies the dissolution for entry in the commercial register.

**Art. 913**

C. Liquidation, distribution of assets

<sup>1</sup> The cooperative is liquidated in accordance with the provisions governing companies limited by shares, subject to the following provisions.

<sup>2</sup> The assets of the dissolved cooperative remaining after payment of all its debts and repayment of any shares may be distributed among the members only where the articles of association provide for such distribution.

<sup>3</sup> Unless the articles of association provide otherwise, in this case the assets are distributed among the members as at the time of dissolution or their legal successors on a per capita basis. The statutory entitlement of departed members or their heirs to a financial settlement is reserved.

<sup>4</sup> Where the articles of association make no provision for such distribution among the members, the liquidation surplus must be used for the society's purpose or to promote charitable causes.

<sup>5</sup> Unless the articles of association provide otherwise, the general assembly of members decides on this matter.

<sup>561</sup> Repealed by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), with effect from 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

**Art. 914**<sup>562</sup>

D. ...

**Art. 915**

E. Takeover by a public sector corporation

<sup>1</sup> Where the assets of a cooperative are taken over by the Confederation, by a canton or, under guarantee from the canton, by a district or commune, with the consent of the general assembly of members it may be agreed that no liquidation will take place.

<sup>2</sup> The resolution of the general assembly of members must be made in accordance with the provisions governing dissolution and notified to the commercial registry.

<sup>3</sup> On entry of such resolution in the commercial register, the transfer of the cooperative's assets and debts is complete and the cooperative's name must be deleted.

**Section Seven: Liability****Art. 916**<sup>563</sup>

A. Liability to the cooperative

All persons engaged in the administration, business management or auditing or liquidation of the cooperative are liable to the cooperative for the losses arising from any wilful or negligent breach of their duties.

**Art. 917**

B. Liability to the cooperative, members and creditors

<sup>1</sup> Any director or liquidator who wilfully or negligently breaches his statutory duties with regard to the overindebtedness of the cooperative is liable to the cooperative, the individual members and the creditors for the losses arising.

<sup>2</sup> Claims for compensation for losses suffered by the members and the creditors only indirectly through harm done to the cooperative must be brought in accordance with the provisions governing companies limited by shares.

**Art. 918**

C. Joint and several liability and recourse

<sup>1</sup> Where two or more persons are responsible for the same loss, they are jointly and severally liable.

<sup>562</sup> Repealed by Annex No 2 of the Mergers Act of 3 Oct. 2003, with effect from 1 July 2004 (AS 2004 2617; BBl 2000 4337).

<sup>563</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>2</sup> The right of recourse among several defendants is determined by the court with due regard to the degree of fault.

### Art. 919

D. Time limits <sup>1</sup> The claim for damages against any person held liable under the above provisions becomes time-barred five years after the date on which the injured party learned of the loss and of the person liable for it but in any event ten years after the date of the action which caused the loss.

<sup>2</sup> Where the action stems from a criminal act for which criminal law envisages a longer time limit, the latter also applies to the civil claim.

### Art. 920

E. Liability in credit and insurance cooperatives In the case of credit cooperatives and licensed insurance cooperatives, liability is determined according to the provisions governing companies limited by shares.

## Section Eight: Cooperative Unions

### Art. 921

A. Requirements <sup>1</sup> Three or more cooperatives may form a cooperative union and constitute it as a cooperative.

### Art. 922

B. Organisation  
I. Assembly of delegates <sup>1</sup> Unless the articles of association provide otherwise, the supreme governing body of the cooperative union is the assembly of delegates.

<sup>2</sup> The articles of association determine the number of delegates from the affiliated societies.

<sup>3</sup> Unless the articles of association provide otherwise, each delegate has one vote.

### Art. 923

II. Board of directors Unless the articles of association provide otherwise, the board of directors is made up of members from the affiliated cooperatives.

### Art. 924

III. Monitoring, challenge <sup>1</sup> The articles of association may grant the directors of the union the right to monitor the business activities of the affiliated cooperatives.

<sup>2</sup> They may grant the directors of the union the right to challenge in court the resolutions made by the individual affiliated societies.

**Art. 925**

IV. Exclusion of  
new obligations

Accession to a cooperative union may not bring with it any obligations for the members of the acceding society which they do not already have by law or under the articles of association of their own cooperative.

**Section Nine: Involvement of Public Sector Corporations****Art. 926**

<sup>1</sup> Where public sector corporations such as the Confederation or a canton, district or commune have a public interest in a cooperative, the cooperative's articles of association may grant that corporation the right to appoint representatives to the board of directors or the auditor.<sup>564</sup>

<sup>2</sup> These directors and auditors appointed by a public sector corporation have the same rights and duties as those elected by the cooperative.

<sup>3</sup> Only the public sector corporation has the right to dismiss the representatives it appointed to the board of directors and the auditor.<sup>565</sup> The public sector corporation is liable to the cooperative, its members and creditors for the actions of these representatives, subject to rights of recourse under federal and cantonal law.

**Division Four:<sup>566</sup> The Commercial Register, Business Names and Commercial Accounting****Title Thirty: The Commercial Register****Art. 927**

A. Purpose and  
establishment  
I. In general

<sup>1</sup> A commercial register is kept in each canton.

<sup>2</sup> The cantons are free to keep district-based commercial registers.

<sup>3</sup> The cantons determine the official bodies responsible for keeping the commercial register and a cantonal supervisory authority.

<sup>564</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>565</sup> First sentence Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>566</sup> Amended by the Federal Act of 18 Dec 1936, in force since 1 July 1937 (AS 53 185; BBl 1928 I 205, 1932 I 217). See the Final and Transitional Provisions of Title XXIV–XXXIII, at the end of this Code.

**Art. 928**

## II. Liability

1 The commercial registrars and the supervisory authorities to which they directly report are personally liable for all losses caused through their own fault or that of the employees they appoint.

2 ...<sup>567</sup>

3 Where the loss is not covered by the liable civil servant, the canton must bear the shortfall.

**Art. 929**

## III. Federal Council ordinances

1. In general<sup>568</sup>

1 The Federal Council enacts provisions governing the establishment, keeping and supervision of commercial registers and the related procedures, applications for entry, the documents to be filed and their verification, the content of entries, fees and complaint processing.<sup>569</sup>

2 The fees should reflect the economic dimensions of the business registered.

**Art. 929a**<sup>570</sup>

## 2. Electronic commercial registers

1 The Federal Council enacts provisions governing the use of information technology to keep the commercial register and governing electronic data exchange between the commercial registry authorities. In particular, the Federal Council may instruct the cantons to use information technology to keep the commercial register, to accept supporting documents filed electronically, to enter supporting documents in electronic format and to transmit electronic data.

2 The Federal Council determines whether and on what conditions notifications for entry and supporting documents may be filed electronically to the commercial registry. It may enact provisions governing the electronic archiving of supporting documents and instruct the cantons to issue authenticated excerpts from the commercial register in electronic format.

**Art. 930**

## IV. Public register

The commercial register, including all applications for entry and supporting documents, is public.

<sup>567</sup> Repealed by Annex No 10 of the FA of 19 Dec 2008 (Adult Protection, Law of Persons and Law of Children), with effect from 1 Jan 2013 (AS 2011 725; BBl 2006 7001).

<sup>568</sup> Amended by Annex No 2 of the FA of 19 Dec 2003 on Electronic Signatures, in force since 1 Jan 2005 (AS 2004 5085; BBl 2001 5679).

<sup>569</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>570</sup> Inserted by Annex No 2 of the FA of 19 Dec 2003 on Electronic Signatures, in force since 1 Jan 2005 (AS 2004 5085; BBl 2001 5679).

**Art. 931**

V. Swiss Official  
Gazette of  
Commerce

<sup>1</sup> The entries in the commercial register are published in full without delay in the Swiss Official Gazette of Commerce, unless an act or ordinance prescribes the publication of only part or an excerpt thereof.

<sup>2</sup> Similarly, all public announcements prescribed by law are made by publication in the Swiss Official Gazette of Commerce.

<sup>2bis</sup> The Federal Council may also make the data published in the Swiss Official Gazette of Commerce available to the public in other ways.<sup>571</sup>

<sup>3</sup> The Federal Council enacts the provisions governing the establishment of the Swiss Official Gazette of Commerce.

**Art. 931a**<sup>572</sup>

B. Entries  
I. Application

<sup>1</sup> In the case of legal entities, the supreme executive or management body must apply for entry in the commercial register, subject to the provisions of special legislation on public corporations and institutions.

<sup>2</sup> The application must be signed by two members of the supreme executive or management body or by one member who is authorised to sign alone. The application must be signed at the commercial registry or must be filed with legalised signatures.

**Art. 932**

II. Entry into  
force<sup>573</sup>

<sup>1</sup> The timing of the entry in the commercial register is determined by the time at which the entry was made in the journal.

<sup>2</sup> An entry in the commercial register does not take effect in relation to third parties until the working day after the date of publication printed on the issue of the Swiss Official Gazette of Commerce in which the entry is published. That working day is also the key date for determining the start of any time limit described as beginning on publication of the entry.

<sup>3</sup> Special provisions according to which legal effects attach, including those in relation to third parties, or time limits begin to run immediately on entry in the register are reserved.

<sup>571</sup> Inserted by Annex No 2 of the FA of 19 Dec 2003 on Electronic Signatures, in force since 1 Jan 2005 (AS 2004 5085; BBl 2001 5679).

<sup>572</sup> Inserted by No 13 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>573</sup> Amended by No 13 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

**Art. 933**III. Effects<sup>574</sup>

<sup>1</sup> Ignorance of an entry that has become effective in relation to third parties is no defence.

<sup>2</sup> Where the entry of a fact is prescribed but such fact was not entered in the register, it may be relied on in relation to third parties only if it can be shown that they were aware of the said fact.

**Art. 934**<sup>575</sup>

IV. Entry in the commercial register

1. Right and duty

<sup>1</sup> A person operating a trading, manufacturing or other type of commercial business is obliged to have it entered in the commercial register for the place in which its head office is located.

<sup>2</sup> A person operating a business under a business name for which entry in the commercial register is not compulsory has the right to have its business name entered in the commercial register for the place in which its head office is located.

**Art. 935**

2. Branch offices

<sup>1</sup> Swiss branch offices of firms whose head office is in Switzerland must be entered in the register for the place in which they are located once the entry for the head office has been made.

<sup>2</sup> Swiss branch offices of firms whose head office is abroad must be entered in the same manner as branch offices of Swiss firms, providing the applicable foreign law does not require a different approach. A commercial agent resident in Switzerland and with the right of commercial representation must be appointed for such branch offices.

**Art. 936**

3. Implementing provisions

The Federal Council enacts more detailed provisions governing compulsory entry in the commercial register.

<sup>574</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>575</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

4. Business  
Identification  
number

**Art. 936<sup>a576</sup>**

<sup>1</sup> Sole proprietorships, general partnerships and partnerships limited by shares, companies, cooperatives, associations, foundations and public sector institutions entered in the commercial register are each given an identification number in accordance with the Federal Act of 18 June 2010<sup>577</sup> on the Business Identification Number.

<sup>2</sup> This identification number remains unchanged throughout the entity's existence and, in particular, is not affected by any relocation of the entity's seat, reorganisation of the entity or change of name.

<sup>3</sup> The Federal Council enacts implementing provisions. It may provide that the identification number be indicated in addition to the business name on letters, order forms and invoices.

**Art. 937**

V. Changes<sup>578</sup>

Where a fact is entered in the commercial register, any change to that fact must likewise be entered.

**Art. 938<sup>a579</sup>**

VI. Deletion  
1. Duty to delete

Where the business whose business name is entered in the register ceases to exist or passes into the ownership of another person, the previous owners or their heirs are obliged to have the business name deleted from the register.

**Art. 938<sup>a580</sup>**

2. Ex officio  
deletion

<sup>1</sup> Where a company ceases its business activity and if it no longer has realisable assets, the commercial registrar, having made three calls on creditors without response, may delete it from the commercial register.

<sup>2</sup> If a company member, shareholder, cooperative member or creditor claims an interest in maintaining the entry, the court decides.

<sup>576</sup> Inserted by Annex No 2 of the Mergers Act of 3 Oct. 2003 (AS 2004 2617; BBl 2000 4337). Amended by Annex No 1 of the FA of 18 June 2010 on the Business Identification Number, in force since 1 Jan 2011 (AS 2010 4989; BBl 2009 7855).

<sup>577</sup> SR 431.03

<sup>578</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>579</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>580</sup> Inserted by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).



3 The Federal Council regulates the details.

**Art. 938<sup>b581</sup>**

3. Executive officers and powers of representation

1 Where persons entered in the commercial register as an executive officer leave their office, the legal entity concerned must request their deletion of their name without delay.

2 The persons leaving may also request the deletion of their name themselves. The commercial registrar notifies the legal entity of the deletion without delay.

3 The foregoing provisions also apply to the deletion of the names of registered authorised signatories.

**Art. 939**

VII. Insolvency of commercial enterprises and cooperatives<sup>582</sup>

1 Where insolvency proceedings have been commenced in respect of a commercial company or a cooperative, on receipt of the official declaration of insolvency, the commercial registrar must enter the resultant dissolution of the company or cooperative in the commercial register.

2 Where the declaration is revoked, on receipt of the official notice of its revocation, the entry is deleted from the commercial register.

3 On receipt of the official notice of completion of insolvency proceedings, the company or cooperative is deleted from the commercial register.

**Art. 940**

VIII. Duties of the registrar  
1. Duty of verification<sup>583</sup>

1 The registrar must verify whether the statutory requirements for entry are fulfilled.

2 When entering legal entities he must, in particular, check that the articles of association do not contradict provisions of mandatory law and that they have the content required by law.

<sup>581</sup> Inserted by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>582</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

<sup>583</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

**Art. 941**

2. Reminder, ex officio entry

The registrar must hold the interested parties to their obligations to notify facts for entry in the commercial register and, where necessary, must carry out the prescribed entries ex officio.

**Art. 941a**<sup>584</sup>

3. Application to the court or supervisory authority

<sup>1</sup> In the event of any defects in the provisions of mandatory law on the organisation of a company, the registrar applies to the court to take the required measures.

<sup>2</sup> In the event of any defects in the provisions of mandatory law on the organisation of a foundation, the registrar applies to the supervisory authority to take the required measures.

<sup>3</sup> If the provisions of mandatory law on the auditor of an association are infringed, the registrar applies to the court to take the required measures

**Art. 942**

IX. Failure to comply with provisions  
1. Liability for losses<sup>585</sup>

Any person obliged to notify a fact for entry in the commercial register who wilfully or negligently fails to do so is liable for the resultant losses.

**Art. 943**

2. Administrative fines

<sup>1</sup> Where by law a person shares a duty to notify a fact for entry in the commercial register, the registry authority of its own accord penalises any failure to do so by imposing administrative fines in amounts ranging from 10 to 500 francs.

<sup>2</sup> The same fines are imposed on the directors of a company limited by shares who fail to comply with a call to submit the profit and loss account and balance sheet to the commercial registry.

<sup>584</sup> Inserted by Annex No 1 of the FA of 8 Oct. 2004 (Law on Foundations), in force since 1 Jan 2006 (AS **2005** 4545 4549; BBl **2003** 8153 8191).

<sup>585</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS **2007** 4791; BBl **2002** 3148, **2004** 3969).

## Title Thirty-One: Business Names

### Art. 944

A. General principles of business name composition  
I. General provisions

<sup>1</sup> In addition to the essential content required by law, each business name may contain information which serves to describe the persons mentioned in greater detail, an allusion to the nature of the company or an invented name provided that the content of the business name is truthful, cannot be misleading and does not run counter to any public interest.

<sup>2</sup> The Federal Council may enact provisions regulating the permissible scope for use of national and territorial designations in business names.

### Art. 945

II. Names of sole proprietorships  
1. Essential content<sup>586</sup>

<sup>1</sup> A person operating a business as sole proprietor must use his family name, with or without first name, as the essential content of his business name.

<sup>2</sup> If the business name contains other family names, it must indicate which one is the proprietor's family name.<sup>587</sup>

<sup>3</sup> The business name must not have any kind of suffix or ending which suggests constitution as a company or partnership.

### Art. 946

2. Exclusivity of the registered business name

<sup>1</sup> The name of a sole proprietorship<sup>588</sup> entered in the commercial register may not be used by another business proprietor in the same location even if he has the same first name and family name from which the older business name is formed.

<sup>2</sup> In such a case, the owner of the newer business must add a suffix or ending to his own name to produce a business name which is clearly distinct from the older business name.

<sup>3</sup> Claims in respect of unfair competition against sole proprietorships<sup>589</sup> registered in other locations are reserved.

<sup>586</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS **2007** 4791; BBl **2002** 3148, **2004** 3969).

<sup>587</sup> Amended by No I of the FA of 25 Sept. 2015 (Law of Business Names), in force since 1 July 2016 (AS **2016** 1507; BBl **2014** 9305).

<sup>588</sup> Footnote relevant to German version.

<sup>589</sup> Footnote relevant to German version.

**Art. 947 and 948**<sup>590</sup>**Art. 949**<sup>591</sup>**Art. 950**<sup>592</sup>

III. Company names  
1. Composition of the business name

<sup>1</sup> Commercial enterprises and cooperatives are free to choose their business name subject to the general principles on the composition of business names. The business name must indicate the legal form.

<sup>2</sup> The Federal Council shall specify which abbreviations of legal forms are permitted.

**Art. 951**<sup>593</sup>

2. Exclusivity of the registered business name

The business names of a commercial enterprise or a cooperatives must be clearly distinct from every other business name of businesses in any of these legal forms already registered in Switzerland.

**Art. 952**

IV. Branch offices

<sup>1</sup> A branch office must have the same business name as the head office; however, it may append a special addition to its business name providing this applies only to that particular branch office.

<sup>2</sup> The business name of the branch office of a company whose seat is outside Switzerland must also indicate the location of the head office, the location of the branch office and the express designation of branch office.

**Art. 953**<sup>594</sup>

V. ...

<sup>590</sup> Repealed by No I of the FA of 25 Sept. 2015 (Law of Business Names), with effect from 1 July 2016 (AS **2016** 1507; BBl **2014** 9305). See however the transitional provision to this amendment at the end of the text.

<sup>591</sup> Repealed by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), with effect from 1 Jan 2008 (AS **2007** 4791; BBl **2002** 3148, **2004** 3969).

<sup>592</sup> Amended by No I of the FA of 25 Sept. 2015 (Law of Business Names), in force since 1 July 2016 (AS **2016** 1507; BBl **2014** 9305).

<sup>593</sup> Amended by No I of the FA of 25 Sept. 2015 (Law of Business Names), in force since 1 July 2016 (AS **2016** 1507; BBl **2014** 9305). See however the transitional provision to this amendment at the end of the text.

<sup>594</sup> Repealed by No I of the FA of 25 Sept. 2015 (Law of Business Names), with effect from 1 July 2016 (AS **2016** 1507; BBl **2014** 9305).

**Art. 954**

VI. Change of name

The previous business name may be retained where the name of the business owner or partner contained therein has been changed by operation of law or by the competent authority.

**Art. 954a**<sup>595</sup>

B. Obligation to use business and other names

<sup>1</sup> In correspondence, on order forms and invoices and in official communications, the business or other name entered in the commercial register must be given in full and unamended.

<sup>2</sup> Shortened names, logos, trade names, brand names and similar may also be used.

**Art. 955**C. Monitoring<sup>596</sup>

The registrar is obliged ex officio to ensure that the interested parties comply with the provisions governing the composition of business names.

**Art. 955a**<sup>597</sup>

D. Reservation of other provisions of federal law

The registration of a business name does not relieve the persons entitled to use the same of the obligation to comply with other provisions of federal law, in particular on protection against deceit in business.

**Art. 956**E. Protection of business names<sup>598</sup>

<sup>1</sup> The business name of a sole proprietor or commercial company or cooperative entered in the commercial register and published in the Swiss Official Gazette of Commerce is for the exclusive use of the party that registered it.

<sup>2</sup> A party whose interests are injured by the unauthorised use of a business name may apply for an injunction banning further abuse of the business name and sue for damages if the unauthorised user is at fault.

<sup>595</sup> Inserted by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBI 2002 3148, 2004 3969).

<sup>596</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBI 2002 3148, 2004 3969).

<sup>597</sup> Inserted by Annex No 2 of the FA of 21 June 2013, in force since 1 Jan 2017 (AS 2015 3631; BBI 2009 8533).

<sup>598</sup> Amended by Annex No 2 of the FA of 21 June 2013, in force since 1 Jan 2017 (AS 2015 3631; BBI 2009 8533).

**Title Thirty-Two:**<sup>599</sup>  
**Commercial Accounting and Financial Reporting**  
**Section One: General Provisions**

**Art. 957**

A. Duty to keep accounts and file financial reports

<sup>1</sup> The duty to keep accounts and file financial reports in accordance with the following provisions applies to:

1. sole proprietorships and partnerships that have achieved sales revenue of at least 500,000 francs in the last financial year;
2. legal entities.

<sup>2</sup> The following need only keep accounts on income and expenditure and on their asset position:

1. sole proprietorships and partnerships with less than 500,000 francs sales revenue in the last financial year;
2. associations and foundations which are not required to be entered in the commercial Register;
3. foundations that are exempt from the requirement to appoint an auditor under Article 83*b* paragraph 2 Swiss Civil Code<sup>600</sup>.

<sup>3</sup> For undertakings in accordance with paragraph 2, recognised accounting principles apply *mutatis mutandis*.

**Art. 957*a***

B. Accounting

<sup>1</sup> Accounting forms the basis for financial reporting. It records the transactions and circumstances that are required to present the asset, financing and earnings position of the undertaking (the economic position).

<sup>2</sup> It follows the recognised accounting principles. Particular note must be taken of the following:

1. the complete, truthful and systematic recording of transactions and circumstances;
2. documentary proof for individual accounting procedures;
3. clarity;
4. fitness for purpose given the form and size of the undertaking;
5. verifiability.

<sup>599</sup> Amended by No I 2 of the FA of 23 Dec 2011 (Financial Reporting Law), in force since 1 Jan 2013 (AS 2012 6679; BB1 2008 1589). See also the Transitional Provision to this Amendment, at the end of this Code.

<sup>600</sup> SR 210

<sup>3</sup> An accounting voucher is any written record on paper or in electronic or comparable form that is required to be able to verify the business transaction or the circumstances behind an accounting entry.

<sup>4</sup> Accounting is carried out in the national currency or in the currency required for business operations.

<sup>5</sup> It is carried out in one of the official Swiss languages or in English. It may be carried out in writing, electronically or in a comparable manner.

### **Art. 958**

C. Financial reporting  
I. Aim and constituent elements

<sup>1</sup> Financial reporting is intended to present the economic position of the undertaking in such a manner that third parties can make a reliable assessment of the same.

<sup>2</sup> The accounts are filed in the annual report. This contains the annual accounts (the financial statements of the individual entity), comprising the balance sheet, the profit and loss account and the notes to the accounts. The regulations for larger undertakings and corporate groups are reserved.

<sup>3</sup> The annual report must be prepared within six months of the end of the financial year and submitted to the responsible management body or the responsible persons for approval. It must be signed by the chairperson of the supreme management or administrative body and the person responsible for financial reporting within the undertaking.

### **Art. 958a**

II. Principles of financial reporting  
1. Going-concern assumption

<sup>1</sup> Financial reporting is based on the assumption that the undertaking will remain a going concern for the foreseeable future.

<sup>2</sup> If it is intended or probably inevitable that all or some activities will cease in the next twelve months from the balance sheet date, then the financial reports for the relevant parts of undertaking must be based on realisable values. Provisions must be made for expenditures associated with ceasing activities.

<sup>3</sup> Derogations from the going-concern assumption must be specified in the notes to the accounts; their influence on the economic position must be explained.

### **Art. 958b**

2. Chronological and material distinction

<sup>1</sup> Expenditure and income must be entered separately depending on the date and nature of the transaction.

<sup>2</sup> Provided the net proceeds from the sale of goods or services or financial income does not exceed 100,000 francs, accruals based on

time may be dispensed with and instead based on expenditure and income.

### **Art. 958c**

III. Recognised financial reporting principles

<sup>1</sup> The following principles in particular apply to financial reports:

1. they must be clear and understandable.
2. they must be complete.
3. they must be reliable.
4. they must include the essential information.
5. they must be prudent.
6. the same rules must be applied in presentation and valuation.
7. assets and liabilities and income and expenditure may not be offset against each other.

<sup>2</sup> The sum entered for the individual items on the balance sheet and in the notes to the account must be proven by an inventory or by some other method.

<sup>3</sup> Financial reports must be adapted to the special features of the undertaking and the sector while retaining the statutory minimum content.

### **Art. 958d**

IV. Presentation, currency and language

<sup>1</sup> The balance sheet and the profit and loss account may be presented in account or in report form. Items that have no or a negligible value need not be shown separately.

<sup>2</sup> In the annual accounts, the corresponding values of the previous year must be shown alongside the figures for the relevant financial year.

<sup>3</sup> Financial reports are presented in the national currency or in the currency required for business operations. If the national currency is not used, the values must also be shown in the national currency. The exchange rates applied must be published in the notes to the accounts and if applicable explained.

<sup>4</sup> Financial reports are presented in one of the official Swiss languages or in English.

### **Art. 958e**

D. Publication and inspection

<sup>1</sup> Following their approval by the competent management body, the annual accounts and consolidated accounts together with the audit reports must either be published in the Swiss Official Gazette of Commerce or sent as an official copy to any person who requests the same within one year of their approval at his or her expense where the undertaking:



1. has outstanding debentures; or
2. has equity securities listed on a stock market.

<sup>2</sup> Other undertakings must allow creditors who prove a legitimate interest to inspect the annual report and the audit reports. In the event of a dispute, the court decides.

### **Art. 958<sup>f</sup>**

E. Keeping and retaining accounting records

<sup>1</sup> The accounting records and the accounting vouchers together with the annual report and the audit report must be retained for ten years. The retention period begins on expiry of the financial year.

<sup>2</sup> The annual report and the audit report must be retained in a written form and signed.

<sup>3</sup> The accounting records and the accounting vouchers may be retained on paper, electronically or in a comparable manner, provided that correspondence with the underlying business transactions and circumstances is guaranteed thereby and provided they can be made readable again at any time.

<sup>4</sup> The Federal Council shall issue regulations on the accounting records that must be kept, the principles for keeping and retaining them and on the information carriers that may be used.

## **Section Two: Annual Accounts**

### **Art. 959**

A. Balance sheet  
I. Purpose of the balance sheet, duty to prepare a balance sheet and balance sheet eligibility

<sup>1</sup> The balance sheet shows the asset and financing position of the undertaking on the balance sheet date. It is structured into assets and liabilities.

<sup>2</sup> Items must be entered on the balance sheet as assets if due to past events they may be disposed of, a cash inflow is probable and their value can be reliably estimated. Other assets may not be entered on the balance sheet.

<sup>3</sup> Cash and cash equivalents and other assets that will probably become cash or cash equivalents assets or otherwise be realised within one year of the balance sheet date or within the normal operating cycle must be entered on the balance sheet as current assets. All other assets are entered on the balance sheet as capital assets.

<sup>4</sup> Borrowed capital and shareholders' equity must be entered on the balance sheet as liabilities.

<sup>5</sup> Liabilities must be entered on the balance sheet as borrowed capital if they have been caused by past events, a cash outflow is probable and their value can be reliably estimated.

<sup>6</sup> Liabilities must be entered on the balance sheet as current liabilities if they are expected to fall due for payment within one year of the balance sheet date or within the normal operating cycle. All other liabilities must be entered on the balance sheet as long-term liabilities.

<sup>7</sup> The shareholders' equity must be shown and structured in the required legal form.

**Art. 959a**

II. Minimum structure

<sup>1</sup> Among the assets, the liquidity ratio must be shown based on at least the following items, both individually and in the specified order:

1. current assets:
  - a. cash and cash equivalents and current assets with a stock exchange price,
  - b. trade receivables,
  - c. other current receivables,
  - d. inventories and non-invoiced services,
  - e. accrued income and prepaid expenses;
2. capital assets:
  - a. financial assets,
  - b. shareholdings,
  - c. tangible fixed assets,
  - d. intangible fixed assets,
  - e. non-paid up basic, shareholder or foundation capital.

<sup>2</sup> The due date of liabilities must be shown based on at least the following items, both individually and in the specified order:

1. current borrowed capital:
  - a. trade creditors,
  - b. current interest-bearing liabilities,
  - c. other current liabilities,
  - d. deferred income and accrued expenses;
2. long-term borrowed capital:
  - a. long-term interest-bearing liabilities,
  - b. other long-term liabilities,
  - c. provisions and similar items required by law;
3. shareholders' equity:
  - a. basic, shareholder or foundation capital, if applicable separately according to participation classes,
  - b. statutory capital reserves,
  - c. statutory retained earnings,

- d. voluntary retained earnings or accumulated losses as negative items,
- e. own capital shares as negative items.

<sup>3</sup> Other items must be shown individually on the balance sheet or in the notes to the accounts, provided this is essential so that third parties can assess the asset or financing position or is customary as a result of the activity of the company.

<sup>4</sup> Receivables and liabilities vis-à-vis direct or indirect participants and management bodies and vis-à-vis undertakings in which there is a direct or indirect participation must in each case be shown separately on the balance sheet or in the notes to the accounts.

### **Art. 959b**

B. Profit and loss account; minimum structure

<sup>1</sup> The profit and loss account presents the earnings of the company over the financial year. It may be prepared according to the period-based accounting method or the cost of sales method.

<sup>2</sup> If the period-based accounting method is used (nature of expense method), a minimum of the following items must be shown individually and in the specified order:

1. net proceeds from sales of goods and services;
2. changes in inventories of unfinished and finished goods and in non-invoiced services;
3. cost of materials;
4. staff costs;
5. other operational costs;
6. depreciation and valuation adjustments on fixed asset items;
7. financial costs and financial income;
8. non-operational costs and non-operational income;
9. extraordinary, non-recurring or prior-period costs and income;
10. direct taxes;
11. annual profit or annual loss.

<sup>3</sup> If the cost of sales method is used (activity-based costing method), a minimum of the following items must be shown individually and in the specified order:

1. net proceeds from sales of goods and services;
2. acquisition or manufacturing costs of goods and services sold;
3. administrative costs and distribution costs;
4. financial costs and financial income;

5. non-operational costs and non-operational income;
6. extraordinary, non-recurring or prior-period costs and income;
7. direct taxes;
8. annual profit or annual loss.

<sup>4</sup> If the cost of sales method is used, the notes to the accounts must also show the staff costs and, as a single item, depreciation and valuation adjustments to fixed asset items.

<sup>5</sup> Other items must be shown individually in the profit and loss account or in the notes to the accounts to the extent that this is essential in order that third parties can assess the earning power or is customary as a result of the activity of the company.

### **Art. 959c**

C. Notes to the accounts

<sup>1</sup> The notes to the annual accounts supplement and explain the other parts of the annual accounts. They contain:

1. details of the principles applied in the annual accounts where these are not specified by law;
2. information, breakdowns and explanations relating to items on the balance sheet and in the profit and loss account;
3. the total amount of replacement reserves used and the additional hidden reserves, if this exceeds the total amount of new reserves of the same type where the result achieved thereby is considerably more favourable;
4. other information required by law.

<sup>2</sup> The notes to the accounts must also include the following information, unless it is already provided on the balance sheet or in the profit and loss account:

1. the business name or name of the undertaking as well as its legal form and registered office;
2. a declaration as to whether the number of full-time positions on annual average is no more than 10, 50 or 250;
3. the business name, legal form and registered office of undertakings in which direct or substantial indirect shareholdings are held, stating the share of the capital and votes held;
4. the number of its own shares that the undertaking itself holds and that are held by undertakings in which it has shareholdings;
5. acquisitions and sales of its own shares and the terms on which they were acquired or sold;

6. the residual amount of the liabilities from sale-like leasing transactions and other leasing obligations, unless these expire or may be terminated within twelve months of the balance sheet date expiry or be terminated may;
7. liabilities vis-à-vis pension schemes;
8. the total amount of collateral for third party liabilities;
9. the total amount of assets used to secure own liabilities and assets under reservation of ownership;
10. legal or actual obligations for which a cash outflow either appears unlikely or is of an amount that cannot be reliably estimated (contingent liabilities);
11. the number and value of shares or options on shares held by management or administrative bodies and by employees;
12. explanations of exceptional, non-recurring or prior-period items in the profit and loss account;
13. significant events occurring after the balance sheet date;
14. in the event of the auditor's premature resignation: the reasons therefor.

<sup>3</sup> Sole proprietorships and partnerships may dispense with notes to the accounts if they are not required to file financial reports under the regulations for larger undertakings. If additional information is required in the regulations on the minimum structure of the balance sheet and profit and loss account and the notes to the accounts are dispensed with, this information must be shown directly on the balance sheet or in the profit and loss account.

<sup>4</sup> Undertakings with outstanding debentures must provide information on the amounts concerned, interest rates, maturity dates and other conditions.

#### **Art. 960**

D. Valuation  
I. Principles

<sup>1</sup> Assets and liabilities are normally valued individually, provided they are significant and not normally consolidated as a group for valuation purposes due to their similarity.

<sup>2</sup> Valuation must be carried out prudently, but this must not prevent the reliable assessment of the economic position of the undertaking.

<sup>3</sup> If there are specific indications that assets have been overvalued or that provisions are too low, the values must be reviewed and adjusted if necessary.

**Art. 960a**

## II. Assets

## 1. In general

<sup>1</sup> When first recorded, assets must be valued no higher than their acquisition or manufacturing costs.

<sup>2</sup> In any subsequent valuation, assets must not be valued higher than their acquisition or manufacturing costs. Provisions on individual types of assets are reserved.

<sup>3</sup> Loss in value due to usage or age must be taken into account through depreciation, while other losses in value must be taken into account through valuation adjustments. Depreciation and valuation adjustments must be applied in accordance with generally recognised commercial principles. They must be deducted directly or indirectly from the relevant assets and charged to the profit and loss account and may not be shown under liabilities.

<sup>4</sup> For replacement purposes and to ensure the long-term prosperity of the undertaking, additional depreciation and valuation adjustments may be made. For the same purposes, the cancellation of depreciation and valuation adjustments that are no longer justified may be dispensed with.

**Art. 960b**

## 2. Assets with observable market prices

<sup>1</sup> In the subsequent valuation, assets with a stock exchange price or another observable market price in an active market may be valued at that price as of the balance sheet date, even if this price exceeds the nominal value or the acquisition value. Any person who exercises this right must value all assets in corresponding positions on the balance sheet that have an observable market price at the market price as of the balance sheet date. In the notes to the accounts, reference must be made to this valuation. The total value of the corresponding assets must be disclosed separately for securities and other assets with observable market price.

<sup>2</sup> If assets are valued at the stock exchange price or at the market price as of the balance sheet date, a value adjustment to be charged to the profit and loss account may be made in order to take account of fluctuations in the price development. Such valuation adjustments are not permitted, however, if they would result in both the acquisition value and the lower market value being undercut. The total amount of fluctuation reserves must be shown separately on the balance sheet or in the notes to the accounts.

**Art. 960c**

## 3. Inventories and non-invoiced services

<sup>1</sup> If the realisable value in the subsequent valuation of inventories and non-invoiced services taking account of expected costs is less than the acquisition or manufacturing costs on balance sheet date, this value must be entered.

<sup>2</sup> Inventories comprise raw materials, work in progress, finished goods and resale merchandise.

#### **Art. 960d**

4. Capital assets <sup>1</sup> Capital assets are assets that are acquired with the intention of using or holding them for the long-term.

<sup>2</sup> Long-term means a period of more than twelve months.

<sup>3</sup> Shareholdings are shares in the capital of another undertaking that are held for the long-term and confer a significant influence. This is presumed if the shares confer at least 20 per cent of the voting rights.

#### **Art. 960e**

III. Liabilities <sup>1</sup> Liabilities must be entered at their nominal value.

<sup>2</sup> If past events lead to the expectation of a cash outflow in future financial years, the provisions probably required must be made and charged to the profit and loss account.

<sup>3</sup> Provisions may also be made in particular for:

1. regularly incurred expenditures from guarantee commitments;
2. renovations to tangible fixed assets;
3. restructuring;
4. securing the long-term prosperity of the undertaking.

<sup>4</sup> Provisions that are no longer required need not be cancelled.

### **Section Three: Financial Report for Larger Undertakings**

#### **Art. 961**

A. Additional requirements for the annual report

Undertakings that are required by law to have an ordinary audit must:

1. provide additional information in the notes to the annual accounts;
2. prepare a cash flow statement as part of the annual accounts;
3. draw up a management report.

#### **Art. 961a**

B. Additional information in the notes to the annual accounts

The notes to the annual accounts must also contain the following information:

1. long-term interest-bearing liabilities, arranged according to due date within one to five years or after five years;

2. on the fees paid to the auditor, with separate items for audit services and other services.

**Art. 961b**

C. Cash flow statement

The cash flow statement presents separately changes in cash and cash equivalents from business operations, investment activities and financing activities.

**Art. 961c**

D. Management report

<sup>1</sup> The management report presents the business performance and the economic position of the undertaking and, if applicable, of the corporate group at the end of the financial year from points of view not covered in the annual accounts.

<sup>2</sup> The management report must in particular provide information on:

1. the number of full-time positions on annual average;
2. the conduct of a risk assessment;
3. orders and assignments;
4. research and development activities;
5. extraordinary events;
6. future prospects.

<sup>3</sup> The management report must not contradict the economic position presented in the annual accounts.

**Art. 961d**

E. Simplification due to consolidated accounts

<sup>1</sup> The additional information in the notes to the annual accounts, the cash flow statement and the management report may be dispensed with if the undertaking itself or a legal entity controlling the undertaking prepares consolidated accounts in accordance with a recognised financial reporting standard.

<sup>2</sup> The following persons may request financial reports in accordance with the regulations in this Section:

1. company members who represent at least 10 per cent of the basic capital;
2. 10 per cent of cooperative members or 20 per cent of the members of an association;
3. any company member or any member subject to personal liability or a duty to pay in further capital.



## Section Four: Financial Statements in accordance with Recognised Financial Reporting Standards

### Art. 962

#### A. General

<sup>1</sup> In addition to annual accounts under this Title, the following must prepare financial statements in accordance with a recognised financial reporting standard:

1. companies whose equity securities are listed on a stock market, if the stock market so requires;
2. cooperatives with a minimum of 2000 members;
3. foundations that are required by law to have an ordinary audit.

<sup>2</sup> The following may also request financial statements in accordance with a recognised standard:

1. company members who represent at least 20 per cent of the basic capital;
2. 10 per cent of cooperative members or 20 per cent of the members of an association;
3. any company member or any member subject to personal liability or a duty to pay in further capital.

<sup>3</sup> The duty to prepare financial statements in accordance with a recognised standard ceases to apply if consolidated accounts are prepared in accordance with a recognised standard.

<sup>4</sup> The supreme management or administrative body is responsible for choosing the recognised standard, unless the Articles of Association, the by-laws or the foundation deed provide otherwise or the supreme management body fails to specify the recognised standard.

### Art. 962a

#### B. Recognised financial reporting standards

<sup>1</sup> If financial statements are prepared in accordance with a recognised financial reporting standard, details of the standard must be given in the financial statements.

<sup>2</sup> The chosen recognised standard must be applied in its entirety and for the financial statements as a whole.

<sup>3</sup> Compliance with the recognised standard must be verified by a qualified audit specialist. An ordinary audit must be made of the financial statements.

<sup>4</sup> Financial statements in accordance with a recognised standard must be submitted to the supreme management body when the annual accounts are submitted for approval, although they do not require approval.

<sup>5</sup> The Federal Council shall specify the recognised standards. It may stipulate requirements that must be met when choosing a standard or when changing from one standard to another.

## Section Five: Consolidated accounts

### Art. 963

A. Duty to prepare

<sup>1</sup> Where a legal entity that is required to file financial reports controls one or more undertakings that are required to file financial reports, the entity must prepare consolidated annual accounts (consolidated accounts) in the annual report for all the undertakings controlled.

<sup>2</sup> A legal entity controls another undertaking if it:

1. directly or indirectly holds a majority of votes in the highest management body;
2. directly or indirectly has the right to appoint or remove a majority of the members of the supreme management or administrative body; or
3. it is able to exercise a controlling influence based on the articles of association, the foundation deed, a contract or comparable instruments.

<sup>3</sup> A recognised standard under Article 963*b* may define the group of undertakings.

<sup>4</sup> Associations, foundations and cooperatives may delegate the duty to prepare consolidated accounts to a controlled undertaking provided the controlled undertaking concerned brings all the other undertakings together under a single management by holding a voting majority or in any other way and proves that it actually exercises control.

### Art. 963*a*

B. Exemption from the duty to prepare accounts

<sup>1</sup> A legal entity is exempt from the duty to prepare consolidated accounts if it:

1. together with the controlled undertaking has not exceeded two of the following thresholds in two successive financial years:
  - a. a balance sheet total of 20 million francs,
  - b. sales revenue of 40 million francs,
  - c. 250 full-time positions on annual average;
2. is controlled by an undertaking whose consolidated accounts have been prepared and audited in accordance with Swiss or equivalent foreign regulations; or

3. it has delegated the duty to prepare consolidated accounts to a controlled undertaking in accordance with Article 963 paragraph 4.
- <sup>2</sup> Consolidated accounts must nonetheless be prepared where:
1. this is necessary in order to make the most reliable assessment of the economic position;
  2. company members who represent at least 20 per cent of the basic capital or 10 per cent of the members of a cooperative or 10 per cent of the members of an association so require;
  3. a company member or an association member subject to personal liability or a duty to pay in further capital so requires; or
  4. the foundation supervisory authority so requires.
- <sup>3</sup> If a legal entity in accordance with paragraph 1 number 2 dispenses with preparing the consolidated accounts for the subsidiary group, it must disclose the consolidated accounts of the parent group in accordance with the regulations for its own annual accounts.

#### **Art. 963b**

C. Recognised financial reporting standards

<sup>1</sup> The consolidated accounts of the following undertakings must be prepared in accordance with a recognised financial reporting standard:

1. companies whose equity securities are listed on a stock market, if the stock market so requires;
2. cooperatives with a minimum of 2000 members;
3. foundations that are required by law to have an ordinary audit.

<sup>2</sup> Article 962a paragraphs 1–3 and 5 apply *mutatis mutandis*.

<sup>3</sup> The consolidated accounts of other undertakings are governed by recognised financial reporting principles. In the notes to the consolidated accounts, the undertaking shall specify the valuation principles. If it derogates from such rules, it shall give notice thereof in the notes to the accounts and provide the information required for assessing the asset, financing and earnings of the corporate group in a different form.

<sup>4</sup> Consolidated accounts must nonetheless be prepared in accordance with a recognised financial reporting standard where:

1. company members who represent at least 20 per cent of the basic capital or 10 per cent of the members of a cooperative or 20 per cent of the members of an association so require;
2. a company member or an association member subject to personal liability or a duty to pay in further capital so requires; or
3. the foundation supervisory authority so requires.

**Art. 964**<sup>601</sup>**Division Five:**<sup>602</sup> **Negotiable Securities****Title Thirty-Three: Registered Securities, Bearer Securities and Instruments to Order****Section One: General Provisions****Art. 965**

A. Definition of negotiable security

A negotiable security is any instrument to which a right attaches in such a manner that it may not be exercised or transferred to another without the instrument.

**Art. 966**

B. Obligation under the security

<sup>1</sup> The obligor under a negotiable security is obliged to render performance only against surrender of the instrument.

<sup>2</sup> By rendering the performance due at maturity to the creditor as indicated by the instrument, the obligor is released from the obligation unless he is guilty of malice or gross negligence.

**Art. 967**

C. Transfer of the security  
I. General form

<sup>1</sup> The transfer of any negotiable security conferring title or a limited right in rem requires the transfer of possession of the instrument in all cases.

<sup>2</sup> In addition, the transfer of instruments to order requires endorsement and that of registered securities requires a written declaration, which must not be made on the instrument itself.

<sup>3</sup> By law or agreement, the transfer may require the participation of other persons, in particular the obligor.

**Art. 968**

II. Endorsement  
1. Form

<sup>1</sup> In all cases, endorsement must be done in accordance with the provisions governing bills of exchange.

<sup>2</sup> The formal requirements for transfer are satisfied once the endorsement is completed and the instrument handed over.

<sup>601</sup> Repealed by No I of the FA of 22 Dec 1999, with effect from 1 June 2002 (AS 2002 949; BBl 1999 5149).

<sup>602</sup> Amended by the Federal Act of 18 Dec 1936, in force since 1 July 1937 (AS 53 185; BBl 1928 I 205, 1932 I 217). See the Final and Transitional Provisions to Title XXIV-XXXIII, at the end of this Code.

**Art. 969**

2. Effect In the case of all transferable securities, unless the content or nature of the instrument dictate otherwise, on endorsement and transfer of the instrument the rights of the endorser pass to the acquirer.

**Art. 970**

- D. Conversion 1 A registered security or instrument to order may be converted into a bearer security only with the consent of all the beneficiaries and obligors concerned. Such consent must be declared on the instrument itself.
- 2 The same general principle applies to conversion of bearer securities into registered securities or instruments to order. In this case, where the consent of a beneficiary or obligor is lacking, conversion is effective but only as between the creditor who undertook it and his immediate legal successor.

**Art. 971**

- E. Cancellation  
I. Party requesting cancellation 1 A negotiable security that has been lost may be cancelled by the court.
- 2 Cancellation may be requested by the beneficiary of the instrument at the time it was lost or its loss was discovered.

**Art. 972**

- II. Procedure, effect 1 Following cancellation of the instrument, the beneficiary may exercise his right even without the instrument or request the issue of a new instrument.
- 2 In other respects, the provisions governing the individual types of securities apply to the procedure for and effect of cancellation.

**Art. 973**

- F. Special provisions The special provisions governing negotiable securities, such as bills of exchange, cheques and mortgage bonds, are reserved.

**Art. 973a**<sup>603</sup>

G. Collective custody, global certificate and uncertificated securities  
 I. Collective custody of negotiable securities

<sup>1</sup> A bailee has the power to hold fungible negotiable securities from two or more bailors together in safe custody unless a bailor expressly requests that his securities be held separately.

<sup>2</sup> If fungible negotiable securities are entrusted to a bailee for collective custody, the bailor acquires on deposit joint fractional title to the negotiable securities of the same class belonging to the collective holding. In order to determine the fractional share, the nominal value or in the case of securities without nominal value, the number of securities, is decisive.

<sup>3</sup> A bailor has the right at any time, irrespective of the involvement or consent of the other bailors to withdraw negotiable securities from the collective holding to the extent of his share.

**Art. 973b**<sup>604</sup>

II. Global certificate

<sup>1</sup> The obligor may issue global certificates or to replace two or more fungible negotiable securities entrusted to a single bailee with a global certificate, provided the conditions for issue or the articles of association of the company provide therefor or the bailors have consented thereto.

<sup>2</sup> The global certificate is a negotiable security in the same form as the individual rights that it represents. It is jointly owned by the participant bailors, in proportion to their shares. The status and rights of the joint owners in relation to the global certificate are governed by Article 973a paragraph 2 *mutatis mutandis*.

**Art. 973c**<sup>605</sup>

III. Uncertificated securities

<sup>1</sup> The obligor may issue rights with the same function as negotiable securities (uncertificated securities) or replace fungible negotiable securities or global certificates that have been entrusted to a single bailee with uncertificated securities provided the conditions for issue or the articles of association of the company provide therefor or the bailors have consented thereto.

<sup>2</sup> The obligor shall keep a book on the uncertificated securities that he has issued in which details of the number and denomination of the uncertificated securities issued and of the creditors are recorded. The book is not open for public inspection.

<sup>603</sup> Inserted by Annex No 3 of the Uncertificated Securities Act of 3 Oct. 2008, in force since 1 Jan 2010 (AS 2009 3577; BBl 2006 9315).

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<sup>605</sup> Inserted by Annex No 3 of the Uncertificated Securities Act of 3 Oct. 2008, in force since 1 Jan 2010 (AS 2009 3577; BBl 2006 9315).

<sup>3</sup> The uncertificated securities are created on entry in the book and continue to exist only in accordance with such entry.

<sup>4</sup> The transfer of uncertificated securities requires a written declaration of assignment. Their pledging is governed by the provisions on the pledging of claims.

## Section Two: Registered Securities

### Art. 974

A. Definition A negotiable security is deemed a registered security if it is made out to a named person but is neither made out to order nor legally declared to be an instrument to order.

### Art. 975

B. Evidence of creditor's right  
I. As a general rule  
<sup>1</sup> The obligor is obliged to render performance only to a person who is the bearer of the instrument and who can show that he is the person in whose name the instrument is registered or the legal successor of such person.

<sup>2</sup> Where the obligor renders performance without such evidence, he is not released from his obligation towards a third party who can demonstrate his entitlement.

### Art. 976

II. With qualified bearer securities  
Where the obligor under the registered security has reserved the right to render performance to any bearer of the instrument, he is released from his obligation by rendering performance in good faith to such a bearer even if he did not request evidence of the creditor's entitlement; however, he is not obliged to render performance to the bearer.

### Art. 977

C. Cancellation  
<sup>1</sup> Where no special provision has been made, registered securities are cancelled in accordance with the provisions governing bearer securities.

<sup>2</sup> The obligor may make provision in the instrument for a simplified form of annulment consisting in a reduction of the number of public calls for presentation or a curtailment of the time limits, or may reserve the right to make valid performance even without presentation or annulment of the instrument, providing the creditor declares the borrower's note void and the debt redeemed by public deed or authenticated document.

## Section Three: Bearer Securities

### Art. 978

- A. Definition
- <sup>1</sup> A negotiable security is deemed a bearer security if the wording or form of the instrument shows that the current bearer is recognised as the beneficiary.
- <sup>2</sup> However, the obligor is no longer permitted to pay if subject to an attachment order served by a court or the police.

### Art. 979

- B. Obligor's defences
- I. In general
- <sup>1</sup> Against a claim deriving from a bearer security, the obligor may plead only such defences as contest the validity of the instrument or arise from the instrument itself and those available to him personally against the respective obligee.
- <sup>2</sup> Defences based on the direct relations between the obligor and a former bearer are admissible where the bearer intentionally acted to the detriment of the obligor when acquiring the security.
- <sup>3</sup> The obligor may not plead the defence that the instrument entered circulation against his will.

### Art. 980

- II. In the case of bearer coupons
- <sup>1</sup> Against a claim deriving from a bearer coupon, the obligor may not plead the defence that the debt principal has been redeemed.
- <sup>2</sup> However, when redeeming the debt principal, the obligor is entitled to retain an amount corresponding to the interest payable on coupons falling due in the future which are not handed in with the debt instruments until the limitation periods applicable to such coupons have expired, unless the coupons not handed in have been cancelled or the amount thereof has been secured.

### Art. 981

- C. Cancellation
- I. In general
1. Application<sup>606</sup>
- <sup>1</sup> Bearer securities, such as shares, bonds, dividend rights certificates, coupon sheets, subscription warrants for coupon sheets, but not individual coupons, are cancelled by the court at the request of the beneficiary.
- <sup>2</sup> ...<sup>607</sup>

<sup>606</sup> Amended by Annex No 5 of the Civil Jurisdiction Act of 24 March 2000, in force since 1 Jan 2001 (AS 2000 2355; BB1 1999 2829).

<sup>607</sup> Repealed by Annex No 5 of the Civil Jurisdiction Act of 24 March 2000, with effect from 1 Jan 2001 (AS 2000 2355; BB1 1999 2829).



<sup>3</sup> The applicant must satisfy the court that he possessed and lost the instrument.

<sup>4</sup> Where the bearer of a security with a coupon sheet or subscription warrant has merely lost the coupon sheet or subscription warrant, presentation of the security in question is sufficient to establish grounds for the application.

### Art. 982

2. Attachment order

<sup>1</sup> At the applicant's request, the obligor under the negotiable security may be forbidden to honour the security on presentation and warned of the danger of double payment.

<sup>2</sup> Where a coupon sheet is to be annulled, the provision governing cancellation of bearer coupons applies *mutatis mutandis* to the individual coupons falling due during the proceedings.

### Art. 983

3. Public call for presentation, time limit

Where the court is satisfied that the applicant was in possession of the security but has since lost it, it issues a public notice calling on the unknown bearer to come forward and present the security within a specified time limit, failing which it will declare the security cancelled. The time limit must be at least six months; it commences on the date of the first public notice.

### Art. 984

4. Form of public notice

<sup>1</sup> The call for presentation of the security must be published three times in the Swiss Official Gazette of Commerce.

<sup>2</sup> In special cases, the court may adopt other means of publicising the call for presentation.

### Art. 985

5. Effect  
a. Where the security is presented

<sup>1</sup> Where the lost bearer security is presented, the court sets the applicant a time limit within which to bring an action for recovery thereof.

<sup>2</sup> Where the applicant fails to bring action within such time limit, the court returns the instrument and lifts the garnishee order.

### Art. 986

b. Where the security is not presented

<sup>1</sup> Where the lost bearer security is not presented within the time limit, the court may cancel it or order further measures, depending on the circumstances.

<sup>2</sup> Notice of the cancellation of a bearer security must be published immediately in the Swiss Official Gazette of Commerce, and elsewhere at the court's discretion.

<sup>3</sup> Following cancellation, the applicant is entitled at his expense to request the issue of a new bearer security or performance of the obligation due.

#### **Art. 987**

II. Of coupons in particular

<sup>1</sup> Where individual coupons have been lost, at the request of the beneficiary the court must order that the amount be deposited with the court at maturity or immediately if the coupon is already due.

<sup>2</sup> Where three years have elapsed since the maturity date and no beneficiary has come forward in the interim, the court must order the amount deposited to be released to the applicant.

#### **Art. 988**

III. In the case of banknotes and the like

Banknotes and other bearer securities issued in large numbers and payable on sight which are intended for circulation as replacement for money and made out in fixed denominations may not be cancelled.

#### **Art. 989<sup>608</sup>**

D. Mortgage certificates

The special provisions governing mortgage certificates made out to the bearer are reserved.

### **Section Four: Bills and Notes**

#### **A. Capacity to incur Liability as a party to a Bill**

##### **Art. 990**

A person with capacity to enter into contracts has capacity to incur liability as a party to a bill of exchange.

<sup>608</sup> Amended by No II 2 of the FA of 11 Dec 2009 (Register Mortgage Certificates and other amendments to Property Law), in force since 1 Jan 2012 (AS **2011** 4637; BBl **2007** 5283).

## **B. The Bill of Exchange**

### **I. Drawing and Formal Requirements of Bills of Exchange**

#### **Art. 991**

1. Requirements A bill of exchange contains:
1. the designation 'bill of exchange' in the text of the instrument and in the language in which it is issued;
  2. the unconditional instruction to pay a certain sum of money;
  3. the name of the person who is to pay (drawee);
  4. the due date;
  5. the bill domicile;
  6. the name of the person to whom or to whose order payment is to be made;
  7. the date and the place of issue;
  8. the drawer's signature.

#### **Art. 992**

2. Required content lacking
- <sup>1</sup> An instrument missing one of the elements stipulated in the previous article is not deemed a bill of exchange, except in the cases described in the following paragraphs.
- <sup>2</sup> A bill of exchange containing no indication of the due date is deemed a sight bill.
- <sup>3</sup> Where no other specific place is mentioned, the place indicated together with the name of the drawee is deemed both the bill domicile and the domicile of the drawee.
- <sup>4</sup> A bill of exchange containing no indication of the place of issue is deemed drawn at the place indicated together with the name of the drawer.

#### **Art. 993**

3. Types
- <sup>1</sup> A bill of exchange may be made out to the drawer's own order.
- <sup>2</sup> It may be drawn on the drawer himself.
- <sup>3</sup> It may be drawn for the account of a third party.

#### **Art. 994**

4. Payment of domiciled bills
- A bill of exchange may be domiciled with a third party, at the drawee's domicile or at another place.

**Art. 995**

5. Promise of interest

<sup>1</sup> In a bill of exchange payable on sight or at a stated period after presentation for acceptance, the drawer may stipulate that the bill amount will bear interest. For all other bills, the interest rate comment is deemed unwritten.

<sup>2</sup> The interest rate must be indicated on the bill of exchange; where there is no such indication, the interest rate comment is deemed unwritten.

<sup>3</sup> The interest accrues as of the date on which the bill of exchange was drawn, unless some other date is specified.

**Art. 996**

6. Discrepancy in specification of bill amount

<sup>1</sup> Where the bill amount is given in both letters and numbers, in the event of any discrepancy the amount given in letters is the valid amount.

<sup>2</sup> Where the bill amount is given more than once in both letters and numbers, in the event of any discrepancy the lowest amount is the valid amount.

**Art. 997**

7. Signatures of persons lacking capacity

Where a bill of exchange bears a signature of a person lacking capacity to enter into liabilities on a bill of exchange, a forged signature, the signature of a bogus person or a signature which for whatever other reason is not binding on the person who signed or in whose name the bill was signed, this fact has no effect on the validity of the other signatures.

**Art. 998**

8. Unauthorised signature

A person who signs a bill of exchange as a representative of another without being authorised so to do is himself liable on the bill and, if he honours the bill, has the same rights as the party he purported to represent would have. The same applies to a representative who exceeds his power of representation.

**Art. 999**

9. Liability of the drawer

<sup>1</sup> The drawer is liable for the acceptance and payment of the bill of exchange.

<sup>2</sup> He may disclaim liability for acceptance; any comment whereby he disclaims liability for payment is deemed unwritten.

**Art. 1000**

10. Blank bill      Where a bill of exchange that was incomplete when it was negotiated is completed in a manner contrary to the agreed terms, such non-compliance with the agreed terms may not be invoked against the bearer unless he acquired the bill in bad faith or was guilty of gross negligence when he acquired it.

**II. Endorsement****Art. 1001**

1. Transferability      <sup>1</sup> Any bill of exchange may be transferred by endorsement even if it is not expressly made out to order.
- <sup>2</sup> Where the drawer has included the words “not to order” or a comment to that effect in the bill of exchange, the bill may be transferred only subject to the formal requirements and with the effects of a normal assignment.
- <sup>3</sup> The endorsement may also be made out to the drawee, regardless of whether he has accepted the bill or not, to the drawer or to any other party liable on it. Such persons may endorse the bill further.

**Art. 1002**

2. Requirements      <sup>1</sup> The endorsement must be unconditional. Conditions attached to the endorsement are deemed unwritten.
- <sup>2</sup> A partial endorsement is void.
- <sup>3</sup> An endorsement to the bearer is deemed a blank endorsement.

**Art. 1003**

3. Form      <sup>1</sup> The endorsement must be written on the bill of exchange itself or on a sheet attached thereto (annex, rider). It must be signed by the endorser.
- <sup>2</sup> The endorsement need not designate the endorsee and may consist merely of the signature of the endorser (blank endorsement). In the latter case the endorsement is valid only if written on the reverse of the bill or on the annex.

**Art. 1004**

4. Effects  
a. Transfer function      <sup>1</sup> The endorsement transfers all rights arising from the bill of exchange.
- <sup>2</sup> If it is a blank endorsement, the bearer may

1. add his name or the name of another person to the endorsement;
2. endorse the bill further by blank endorsement or endorsement to a specified person;
3. negotiate the bill further without completing the blank endorsement and without endorsing it.

### Art. 1005

b. Guarantee function

<sup>1</sup> Unless the bill contains a comment to the contrary, the endorser is liable for acceptance and payment.

<sup>2</sup> He may forbid further endorsement of the bill; in this case he is not liable to persons to whom the bill is further endorsed.

### Art. 1006

c. Proof of bearer's entitlement

<sup>1</sup> A person possessing the bill is the holder in due course providing he can demonstrate his entitlement by means of an uninterrupted sequence of endorsements, even where the last is a blank endorsement. Deleted endorsements are deemed unwritten. Where a blank endorsement is followed by a further endorsement, it is presumed that the person who issued this endorsement acquired the bill by means of the blank endorsement.

<sup>2</sup> Where the bill of exchange was somehow lost by a former holder, a new holder who can demonstrate his entitlement in accordance with the provisions of the previous paragraph is obliged to surrender the bill only if he acquired the bill in bad faith or was guilty of gross negligence when he acquired it.

### Art. 1007

5. Defences

A person to whom a bill of exchange is presented for collection may not plead against the holder such defences as are based on his direct relations with the drawer or a previous holder unless the current holder intentionally acted to the detriment of the obligor when acquiring the bill.

### Art. 1008

6. Procurator endorsement

<sup>1</sup> Where the endorsement contains the comment “value for collection”, “for collection”, “per pro.” or some other comment expressing no more than authorisation, the holder may exercise all the rights under the bill of exchange; however, he may transfer it only by means of a further procurator endorsement.

<sup>2</sup> In this case, the parties liable on a bill may plead against the holder only such defences as are available to them against the endorser.

<sup>3</sup> The authority conferred by the procuration endorsement is not extinguished on the death or incapacity of the person conferring it.

#### **Art. 1009**

7. Pledging endorsement

<sup>1</sup> Where the endorsement contains the comment “value for security”, “value for pledge” or some other comment expressing a pledge, the holder may exercise all the rights under the bill of exchange; however, any endorsement issued by him only has the effect of a procuration endorsement.

<sup>2</sup> The parties liable on a bill may not plead against the holder such defences as are based on his direct relations with the endorser unless the holder intentionally acted to the detriment of the obligor when acquiring the bill.

#### **Art. 1010**

8. Subsequent endorsement

<sup>1</sup> An endorsement after maturity has the same effects as an endorsement prior to maturity. However, where the bill of exchange was endorsed only after protest for non-payment or after expiry of the time limit for protest, the endorsement only has the effects of a normal assignment.

<sup>2</sup> Until the opposite is proven, it is presumed that an undated endorsement was made on the bill of exchange before the time limit for protest expired.

### **III. Acceptance**

#### **Art. 1011**

1. Right to present bill

The holder or any person merely in possession of the bill of exchange may present it to the drawee at his domicile for acceptance at any time prior to maturity.

#### **Art. 1012**

2. Presentation compulsory or prohibited

<sup>1</sup> The drawer may stipulate on any bill of exchange that it must be presented for acceptance, with or without a time limit for such presentation.

<sup>2</sup> He may prohibit presentation of the bill of exchange for acceptance where it is not domiciled with a third party or at a place other than the domicile of the drawee and is not an after-sight bill.

<sup>3</sup> He may also stipulate that the bill of exchange must not be presented for acceptance prior to a specified date.

<sup>4</sup> Unless the drawer has prohibited presentation for acceptance, any endorser may stipulate that the bill of exchange must be presented for acceptance, with or without a time limit.

### Art. 1013

3. Duty to present after-sight bills

<sup>1</sup> An after-sight bill must be presented for acceptance within one year of the date on which it was drawn.

<sup>2</sup> The drawer may stipulate a shorter or longer time limit.

<sup>3</sup> The endorser may stipulate a shorter time limit for presentation.

### Art. 1014

4. Repeat presentation

<sup>1</sup> The drawee may request that the bill of exchange be presented to him again on the day after the first presentation. The parties may invoke any failure to comply with this requirement only if the request is mentioned in the protest.

<sup>2</sup> The holder is not obliged to leave a bill of exchange presented for acceptance in the drawee's possession.

### Art. 1015

5. Form of acceptance

<sup>1</sup> The declaration of acceptance is made on the bill of exchange. It is expressed through the word "accepted" or words to the same effect; it must be underlined by the drawee. The drawee is deemed to have declared his acceptance by merely appending his signature to the obverse of the bill of exchange.

<sup>2</sup> Where the bill of exchange is an after-sight bill or must be presented for acceptance within a specified time limit owing to a special comment to that effect, the declaration of acceptance must indicate the date on which it is made, unless the holder requires that the date of presentation be indicated. Where no date is indicated, the holder must draw attention to this omission by timely protest in order to safeguard his right of recourse against the endorser and the drawer.

### Art. 1016

6. Restrictions on acceptance

<sup>1</sup> The acceptance must be unconditional; however, the drawee may limit it to a portion of the bill amount.

<sup>2</sup> Where the declaration of acceptance contains any terms that deviate from the provisions of the bill of exchange, acceptance is deemed to have been refused. However, the acceptor is liable according to the terms of his declaration of acceptance.



**Art. 1017**

7. Domiciliate  
and bill domicile

1 Where the drawer has indicated on the bill of exchange a bill domicile other than the domicile of the drawee but without designating a third party by whom payment is to be made, the drawee may designate a third party when he declares acceptance. In the absence of such designation it is presumed that the acceptor himself has undertaken to pay the bill at its domicile.

2 Where the bill of exchange is domiciled with the drawee himself, he may designate in his declaration of acceptance an agent at the bill domicile by whom the payment will be made.

**Art. 1018**

8. Effect of  
acceptance  
a. In general

1 Due to his acceptance, the drawee is obliged to pay the bill of exchange at maturity.

2 In the event of non-payment, the holder, even if he is the drawer, has a claim against the acceptor under the bill of exchange to any sums to which he is entitled pursuant to Articles 1045 and 1046.

**Art. 1019**

b. In the case of  
deletion

1 Where the drawee has struck out the declaration of acceptance made on the bill of exchange prior to returning the bill, acceptance is deemed to have been refused. Until the opposite is proven, it is presumed that such deletion was made prior to the return of the bill.

2 However, where the drawee has informed the holder or a person whose signature has been appended to the bill in writing of his acceptance, he is liable to such persons in accordance with the terms of his declaration of acceptance.

**IV. Bill Guarantees****Art. 1020**

1. Bill guarantor

1 Payment of the bill amount may be secured in part or in full by means of a bill guarantee.

2 Security may be provided by a third party or even by a person whose signature has already been appended to the bill of exchange.

**Art. 1021**

2. Form

1 The guarantee commitment is inscribed on the bill of exchange or an annex (rider) thereto.

2 It is expressed by the words “as guarantor” or a comment to that effect; it must be signed by the bill guarantor.

<sup>3</sup> The mere act of signing the obverse of the bill of exchange is deemed a guarantee commitment, providing the signature is not that of the drawee or the drawer.

<sup>4</sup> The guarantee commitment must indicate for whom the guarantee is given; where there is no such indication, it is deemed to be given for the drawer.

### **Art. 1022**

#### 3. Effects

<sup>1</sup> The bill guarantor is liable in the same manner as the person for whom he has given the guarantee.

<sup>2</sup> His commitment is valid even if the guaranteed obligation is void for any reason other than formal defect.

<sup>3</sup> A bill guarantor who pays the bill of exchange acquires all rights thereunder against the person for whom he has given the guarantee and against all those who are liable to such person under the bill.

## **V. Maturity**

### **Art. 1023**

#### 1. In general

<sup>1</sup> A bill of exchange may be drawn:  
on sight;  
for a specified time after sight;  
for a specified time after drawing;  
on a specified date.

<sup>2</sup> Bills of exchange with other maturity dates or with several consecutive maturity dates are void.

### **Art. 1024**

#### 2. In the case of sight bills

<sup>1</sup> A sight bill is due on presentation. It must be presented for payment within one year of being drawn. The drawer may stipulate a shorter or longer time limit. The endorser may stipulate a shorter time limit for presentation.

<sup>2</sup> The drawer may stipulate that the sight bill may not be presented for payment before a specified date. In this case the time limit for presentation commences on that date.

### **Art. 1025**

#### 3. In the case of after-sight bills

<sup>1</sup> The maturity date of an after-sight bill is determined by the date indicated in the declaration of acceptance or the protest date.

<sup>2</sup> Where no date is indicated in the declaration of acceptance and no protest is made, the bill is deemed to have been accepted on the last

date of the time limit envisaged for presentation for acceptance as against the acceptor.

### **Art. 1026**

4. Computation  
of time limits

1 A bill of exchange made out for one or more months after it was drawn or after sight falls due on the corresponding day of the payment month. If there is no such day, the bill falls due on the last day of the month.

2 Where the bill of exchange is made out for one or more months plus half a month after it was drawn or after sight, the full months are counted first.

3 Where the maturity date is expressed as the beginning, middle or end of a month, such expression is deemed to mean the first, fifteenth or last day of the month.

4 The expressions 'eight days' or 'fifteen days' mean not one or two weeks but a full eight or fifteen days.

5 The expression 'half-month' means fifteen days.

### **Art. 1027**

5. Computation  
by the old  
method

1 Where a bill of exchange is payable on a certain date at a place where the calendar is different from that of the place of issue, the maturity date is determined according to the calendar of the bill domicile.

2 Where a bill drawn between two places with different calendars becomes payable when a specified time has elapsed since it was drawn, the date on which it was drawn is converted to the equivalent date in the calendar of the domicile and the maturity date computed according to the latter.

3 The provision set out in the previous paragraph applies *mutatis mutandis* to the computation of time limits for presentation of bills of exchange.

4 The provisions of this Article do not apply where a comment on the bill of exchange or any other term reveals that the parties intended otherwise.

## **VI. Payment**

### **Art. 1028**

1. Presentation  
for payment

1 The holder of a bill of exchange payable on a specific date or a specified time after it was drawn or after sight must present the bill for payment on the payment date or one of the two subsequent working days.

<sup>2</sup> Delivery of the bill to a clearing house recognised by the Swiss National Bank is equivalent to presentation for payment.<sup>609</sup>

### Art. 1029

2. Right to receipt, part payment

<sup>1</sup> The drawee may require the holder to surrender the received bill of exchange against payment.

<sup>2</sup> The holder may not refuse part payment.

<sup>3</sup> Where a part payment is made, the drawee may insist that it be noted on the bill of exchange and that a receipt be issued for it.

### Art. 1030

3. Payment before and at maturity

<sup>1</sup> The holder of the bill of exchange is not obliged to accept payment before maturity.

<sup>2</sup> The drawee pays before maturity at his own risk.

<sup>3</sup> A person paying at maturity is released from his obligations provided he is not guilty of malice or gross negligence. He is obliged to check that the sequence of endorsements is correct but is not required to verify the signatures of the endorser.

### Art. 1031

4. Payment in foreign currency

<sup>1</sup> Where the bill of exchange is denominated in a currency other than that of the bill domicile, the bill amount may be paid in the national currency at its value as at the maturity date. Where the obligor delays in making the payment, the holder is free to choose whether the bill amount is converted into the national currency at the rate that applies on the maturity date or the rate that applies on the payment date.

<sup>2</sup> The value of the foreign currency is determined according to customary commercial practice at the bill domicile. However, the drawer may stipulate an exchange rate for the bill amount on the bill of exchange.

<sup>3</sup> The provisions of the two previous paragraphs do not apply if the drawer has stipulated payment in a specified currency (actual currency clause).

<sup>4</sup> Where the bill of exchange is denominated in a currency which has the same name but a different value in the country in which the bill was drawn and that in which it is payable, the presumption is that the currency meant is that of the bill domicile.

<sup>609</sup> Amended by Annex No II 2 of the National Bank Act of 3 Oct. 2003, in force since 1 May 2004 (AS 2004 1985; BBl 2002 6097).

**Art. 1032**

5. Deposit

Where the bill of exchange is not presented for payment within the time limit laid down in Article 1028, the obligor may deposit the bill amount with the competent authority at the risk and expense of the holder.

**VII. Recourse in the event of Non-Acceptance and Non-Payment****Art. 1033**<sup>610</sup>

1. Recourse of the holder

<sup>1</sup> In the event of non-payment of a bill at maturity, the holder has right of recourse against the endorser, the drawer and the other parties liable on the bill.

<sup>2</sup> The holder has the same right even before maturity:

1. where acceptance has been refused in part or in full;
2. where the assets of the drawee are subject to insolvency proceedings, regardless of whether he has accepted the bill or not, or where only payments by the drawee have been suspended, or where compulsory execution has been levied on his assets without success;
3. where the assets of the drawer of a bill of exchange whose presentation for acceptance is prohibited are subject to insolvency proceedings.

**Art. 1034**2. Protest  
a. Time limits and requirements

<sup>1</sup> Any refusal of acceptance or of payment must be declared by public deed (protest for non-acceptance or for non-payment).

<sup>2</sup> Protest for non-acceptance must be made within the time limit applicable for presentation for acceptance. Where, in the case of Article 1014 paragraph 1, the bill of exchange was presented for the first time on the last day of the time limit, protest may still be made on the following day.

<sup>3</sup> In the case of bills of exchange payable on a specific day or for a certain time after they were drawn or after sight, protest for non-payment must be made on one of the two working days following the payment date. Protest for non-payment of sight bills must be made within the same time limits for protest for non-acceptance as envisaged in the previous paragraph.

<sup>610</sup> This Article consists of a single paragraph in the French and Italian texts.

<sup>4</sup> Where protest for non-acceptance has been made, neither presentation for payment nor protest for non-payment is required.

<sup>5</sup> Where the drawee has suspended his payments, regardless of whether he has accepted the bill of exchange or not, or compulsory execution has been levied on his assets without success, the holder may have recourse only once the bill has been presented to the drawee for payment and protest has been made.

<sup>6</sup> Where the assets of the drawee, regardless of whether he has accepted the bill of exchange or not, or the assets of the drawer of a bill of exchange whose presentation for acceptance is prohibited are subject to insolvency proceedings, presentation of the court order commencing such proceedings is sufficient to exercise the right of recourse.

### **Art. 1035**

b. Responsibility Such protest must be made by a specially authorised notary or official body.

### **Art. 1036**

c. Content <sup>1</sup> The protest contains:

1. the name of the person or of the business for whom and against whom the protest is made;
2. a statement that a request was made without success to the person or company against whom the protest is made to perform his or its obligation under the bill of exchange or that such person or company could not be reached or that their business premises or address could not be traced;
3. an indication of the place at which and date on which the request was made or attempted without success;
4. the signature of the person or official body making the protest.

<sup>2</sup> Where a part payment is made, this must be noted in the protest.

<sup>3</sup> If the drawee to whom the bill of exchange has been presented for acceptance insists that it be presented again on the following day, this must also be noted in the protest.

### **Art. 1037**

d. Form <sup>1</sup> The protest is made on a separate sheet attached to the bill of exchange.

<sup>2</sup> Where the protest involves the presentation of several duplicates of the same bill of exchange or presentation of the original instrument and a copy of it, it is sufficient if the protest is attached to one of the duplicates or to the original bill.

<sup>3</sup> A note to the effect that the protest is attached to one of the duplicates or to the original instrument must be made on the remaining duplicates or the copy.

### Art. 1038

e. For partial acceptance

Where the bill of exchange is accepted for only part of the bill amount and protest is made for that reason, a copy must be made of the bill of exchange and the protest made on such copy.

### Art. 1039

f. Against several persons

Where performance of a bill obligation is required of several liable parties, only one instrument is required for the protests involved.

### Art. 1040

g. Copy of the protest document

<sup>1</sup> The notary or official body making the protest must make a copy of the protest document.

<sup>2</sup> The following must be indicated on this copy:

1. the amount of the bill of exchange;
2. the maturity date;
3. the place at which and date on which it was drawn;
4. the drawer of the bill of exchange, the drawee and the name of the person or company to whose the order the payment is to be made;
5. the name of the person or company through which the payment is to be made, where this is different from the drawee;
6. the emergency contact details and acceptors for honour.

<sup>3</sup> Copies of protest documents must be archived in chronological order by the notary or official body making the protest.

### Art. 1041

h. Defective protest

A protest signed by the competent notary or official body is valid even if not made in accordance with the regulations or if the information it contains is inaccurate.

### Art. 1042

3. Notification

<sup>1</sup> The holder must notify the immediately preceding endorser and the drawer of the lack of acceptance or payment within four working days of the date on which the protest was made or, in the case of the comment “No protest”, within four working days of the date of presentation. Within two working days of receipt of such notification, every

endorser must pass on the news received to the immediately preceding endorser and give him the names and addresses of the persons from whom he received it, and so on in sequence until the drawer. All time limits run as of receipt of the previous notification.

<sup>2</sup> Where notification is made pursuant to the previous paragraph to a person whose signature is appended to the bill of exchange, the same notification must be made within the same time limit to his bill guarantor.

<sup>3</sup> Where an endorser has omitted to give his address or has written it illegibly, it is sufficient if his immediately preceding endorser is notified.

<sup>4</sup> The notification may be made in any form, including the mere return of the bill of exchange.

<sup>5</sup> Persons under a duty to notify must show that they complied with it within the prescribed time limit. The time limit is deemed observed where a letter containing such notification was posted within the time limit.

<sup>6</sup> A person who fails to notify in good time does not forfeit his right of recourse; he is liable for any losses arising from his failure to notify, but only up to the bill amount.

#### **Art. 1043**

4. Waiver of protest

<sup>1</sup> By appending and signing the comment “No protest” or words to the same effect on the bill of exchange, the drawer and any endorser or bill guarantor may release the holder from his obligation to arrange protest for non-acceptance or non-payment in order to exercise his right of recourse.

<sup>2</sup> The comment does not release the holder from the obligation to present the bill of exchange in good time and to make the requisite notification. The burden of proving that the time limit was not observed lies with any party relying on such point against the holder.

<sup>3</sup> Where the comment was appended by the drawer, it is effective as against all parties liable on the bill; where it was appended by an endorser or a bill guarantor, it is effective only as against them. If the holder arranges for protest to be made in spite of the comment appended by the drawer, he must bear the costs. Where the comment was appended by an endorser or a bill guarantor, all parties liable on the bill must bear the costs of any protest made in spite of it.

#### **Art. 1044**

5. Joint and several liability of the parties

<sup>1</sup> All parties who have drawn, accepted, endorsed or guaranteed a bill of exchange are liable as co-obligors towards the holder.



<sup>2</sup> The holder may resort to any of them individually, severally or all together without being bound by the order in which they assumed their obligations.

<sup>3</sup> The same right accrues to every party who has honoured the bill of exchange.

<sup>4</sup> In asserting his claim against one party liable on a bill, the holder does not surrender his rights against the others or against the endorsers subsequent to such party.

#### **Art. 1045**

6. Nature of recourse

a. By the holder

<sup>1</sup> By way of recourse the holder may claim:

1. the bill amount, provided the bill has not been accepted or honoured, with any agreed interest;
2. interest at a rate of six per cent since the maturity date;
3. the costs of the protest and notifications and any other expenses;
4. a commission of no more than one-third of one per cent.

<sup>2</sup> Where recourse is had before maturity, interest is deducted from the bill amount. Such interest is calculated on the basis of the official (Swiss National Bank) discount rate obtaining at the domicile of the holder on the date on which recourse is had.

#### **Art. 1046**

b. By the party honouring the bill

A party that has honoured the bill of exchange may claim from his preceding endorsers:

1. the full amount he paid;
2. the interest on such amount at a rate of six per cent since the date on which the bill was honoured;
3. his expenses;
4. a commission of no more than 2 thousandths.

#### **Art. 1047**

c. Right to take possession of bill, protest and receipt

<sup>1</sup> Any party liable on a bill against whom a recourse claim is or may be made is entitled to insist that the bill of exchange together with the protest and a receipted invoice be handed over to him against payment of the recourse amount.

<sup>2</sup> Any endorser who has honoured the bill may delete his endorsement and those of the subsequent endorsers.

**Art. 1048**

d. In respect of  
partial ac-  
ceptance

Where recourse is had following a partial acceptance, the party paying the unaccepted portion of the bill amount may insist that this be noted on the bill of exchange and a receipt for such portion be issued to him. Further, the holder must provide him with an authenticated copy of the bill of exchange and the protest to make further recourse possible.

**Art. 1049**

e. Re-exchange  
bill

<sup>1</sup> A party with right of recourse may, where no comment to the contrary exists, exercise such right by drawing a new bill of exchange (re-exchange bill) on one of his preceding endorser which is payable on sight and domiciled at the place of residence of the preceding endorser.

<sup>2</sup> In addition to the amounts specified in Articles 1045 and 1046, the re-exchange bill includes the brokerage fee and the stamp duty for the re-exchange bill.

<sup>3</sup> Where the re-exchange bill is drawn by the holder, the bill amount is dependent on the rate applicable to a sight bill drawn from the bill domicile of the original bill of exchange at the domicile of the preceding endorser. Where the re-exchange bill is drawn by an endorser, the bill amount is dependent on the rate applicable to a sight bill drawn from the domicile of the drawer of the re-exchange bill at the domicile of the preceding endorser.

**Art. 1050**

7. Invalidation  
a. In general

<sup>1</sup> In the event that the holder fails to comply with the time limits for presentation of a sight bill or an after-sight bill, for protest for non-acceptance or for non-payment, for presentation for payment of bills bearing the comment “No protest”,

he forfeits his rights against the endorser, the drawer and all other parties liable on the bill, with the exception of the acceptor.

<sup>2</sup> In the event that the holder fails to comply with the time limit for presentation for acceptance prescribed by the drawer, he forfeits his right of recourse for non-acceptance and for non-payment, unless the wording of the comment shows that the drawer intended to exclude only liability for acceptance.

<sup>3</sup> Where the time limit for presentation is indicated in an endorsement, only the endorser may rely on it.

**Art. 1051**

b. Force majeure

<sup>1</sup> Where insuperable obstacles (statutory provisions enacted by a state or some other instance of force majeure) militate against the timely

presentation of the bill of exchange or timely protest, the time limits for such actions are extended.

<sup>2</sup> The holder is obliged to notify the immediately preceding endorser of the force majeure event without delay and to note such notification together with the date and place and his signature on the bill of exchange or an annex thereto; in other respects, the provisions set out in Article 1042 are applicable.

<sup>3</sup> Once the force majeure ceases to apply, the holder must present the bill for acceptance or for payment without delay and, where necessary, make protest.

<sup>4</sup> In the event that the force majeure lasts for longer than 30 days after maturity, recourse may be had without need for presentation or protest.

<sup>5</sup> In the case of sight bills or after-sight bills, the thirty-day time limit commences on the date on which the holder notified the immediately preceding endorser of the force majeure event; such notification may be made even before expiry of the time limit for presentation. In the case of after-sight bills, the thirty-day time limit is extended by the fixed period after sight indicated on the bill of exchange.

<sup>6</sup> Facts pertaining purely to the person of the holder or a person charged with the task of presenting the bill of exchange or making protest do not count as force majeure events.

#### **Art. 1052**

c. Unjust  
enrichment

<sup>1</sup> To the extent that the drawer of a bill of exchange and the acceptor are unjustly enriched to the detriment of the holder, they remain obliged to the holder even where their bill liability has become time-barred or extinguished on account of failure to take the actions required by law to sustain the entitlement under the bill of exchange.

<sup>2</sup> The claim for unjust enrichment also exists against the drawee, the domiciliate and the person or company for whose account the drawer issued the bill.

<sup>3</sup> By contrast, no such claim exists against the endorsers whose bill liability is extinguished.

### **VIII. Devolution of Cover**

#### **Art. 1053**

<sup>1</sup> Where the drawer of a bill of exchange has been declared insolvent, any claim he holds under civil law against the drawee for restitution of cover or reimbursement of amounts paid devolves on the holder of the bill.

<sup>2</sup> Where the drawer declares on the bill of exchange that he assigns his claims in respect of the cover provided, these devolve on the current holder of the bill.

<sup>3</sup> Once the declaration of insolvency has been published or the assignment has been notified to him, the drawee may make payment only to the duly established holder against surrender of the bill of exchange.

## IX. Act of Honour

### Art. 1054

1. General provisions

<sup>1</sup> The drawer and any endorser or bill guarantor may indicate a person to act as acceptor or payer in case of need.

<sup>2</sup> Subject to the conditions set out below, the bill of exchange may be accepted or paid for honour by any party liable on it against whom recourse may be had.

<sup>3</sup> Any third party, even the drawee, and any party already liable on the bill, with the exception of the acceptor, may accept or pay a bill of exchange for honour.

<sup>4</sup> A person accepting or paying a bill for honour is obliged to notify the liable party for whom he is intervening of his action within two working days. Should he fail to do so, he is liable for any losses caused by the omission, albeit only up to the bill amount.

### Art. 1055

2. Acceptance for honour  
a. Requirements, position of the holder

<sup>1</sup> Acceptance for honour is permitted in all cases in which the holder has a right of recourse before maturity, except where presentation of the bill for acceptance is prohibited.

<sup>2</sup> Where the bill of exchange indicates a person to act as acceptor or payer at the bill domicile in case of need, the holder has a right of recourse before maturity against the person who appended such emergency address and against subsequent endorsers only if he has presented the bill to the person indicated under such address and, in the event that acceptance for honour is refused, has had such refusal noted by means of protest.

<sup>3</sup> In all other cases the holder may refuse acceptance for honour. However, if he admits it, he forfeits his right of recourse before maturity against the person in whose honour acceptance was declared and against subsequent endorsers.

**Art. 1056**

b. Form

The acceptance for honour is noted on the bill of exchange; it must be signed by the acceptor for honour. The declaration of acceptance must indicate the person for whom the acceptance for honour is made; absent such indication, it is deemed made for the drawer.

**Art. 1057**

c. Liability of the acceptor for honour, effect on right of recourse

<sup>1</sup> A person accepting a bill for honour is liable to the holder and the subsequent endorsers of the person for whom he intervened in the same manner as said person.

<sup>2</sup> In spite of the acceptance for honour the party in whose honour the bill of exchange was accepted and his preceding endorsers may insist that the holder surrender the bill of exchange and the protest made, if any, together with a receipted invoice against reimbursement of the amount specified in Article 1045.

**Art. 1058**3. Payment for honour  
a. Requirements

<sup>1</sup> Payment for honour is permitted in all cases in which the holder has a right of recourse at or before maturity.

<sup>2</sup> The payment for honour must comprise the full amount payable by the party liable on the bill for whom it is made.

<sup>3</sup> It must take place no later than the day after the day on which the time limit for protest for non-payment expires.

**Art. 1059**

b. Obligation of the holder

<sup>1</sup> Where the bill of exchange is accepted for honour by persons resident at the bill domicile or the persons indicated on the bill as being willing to pay in case of need are resident at the bill domicile, the holder must present the bill to all such persons no later than the day after the day on which the time limit for protest for non-payment expires and, where applicable, must arrange protest for failure to make payment for honour.

<sup>2</sup> Any failure to make timely protest releases the person who appended the emergency address or in whose honour the bill was accepted and the subsequent endorsers.

**Art. 1060**

c. Consequence of refusal

Where the holder refuses payment for honour, he forfeits his right of recourse against those who would have been released.

**Art. 1061**

d. Right to take possession of bill, protest and receipt

<sup>1</sup> A note that the payment for honour has been received must be made on the bill of exchange, indicating the party for whom the payment was made. In the absence of such an indication, the payment is deemed made for the drawer.

<sup>2</sup> The bill of exchange and any protest made are handed over to the payer for honour.

**Art. 1062**

e. Devolution of the holder's rights; multiple payments for honour

<sup>1</sup> The payer for honour acquires the rights under the bill against the party for whom he paid and against those liable to said party under the bill. However, he is not entitled to endorse it further.

<sup>2</sup> The subsequent endorsers of the party in whose honour payment was made are released.

<sup>3</sup> Where several payments for honour are offered, preference is given to those resulting in release of the largest number of parties liable on the bill. A person paying in honour in contravention of this provision and in full knowledge of the situation forfeits his right of recourse against those who would otherwise have been released.

**X. Production of Multiple Duplicates and Copies of Bills of Exchange****Art. 1063**

1. Duplicates  
a. Right to make duplicates

<sup>1</sup> The bill of exchange may be issued in multiple identical duplicates.

<sup>2</sup> Such duplicates must be given serial numbers within the text on the instrument; otherwise, each duplicate counts as a separate bill of exchange.

<sup>3</sup> Every holder of a bill of exchange may request that multiple duplicates be supplied to him at his own expense, provided the text of the bill of exchange does not stipulate that it was made out as a single copy. To do so, the holder must contact the preceding endorser immediately before him, who in turn must contact his immediately preceding endorser, and so on in sequence back to the drawer. The endorsers are obliged to repeat their endorsements on the newly issued duplicates.

**Art. 1064**

b. Relationship between duplicates

<sup>1</sup> Where payment is made on one duplicate of the bill, the rights under all others are extinguished even if they do not bear a comment to the effect that payment on one renders all the others invalid. However, the

drawee remains liable for any duplicate accepted that has not been returned to him.

2 Where an endorser has transferred the duplicates to a number of different persons, he and his subsequent endorsers are liable for duplicates bearing their signature which have not been surrendered.

#### **Art. 1065**

c. Acceptance  
comment

1 Where one duplicate has been sent for acceptance, a note must be made on the others of the name of the person now in possession of the despatched duplicate. The latter is obliged to surrender it to the rightful holder of any other duplicate.

2 Where he refuses to surrender it, the holder has a right of recourse only after arranging for protest to be made, thereby confirming:

1. that the duplicate sent for acceptance was not surrendered to him on request;
2. that neither acceptance nor payment was obtained on a different duplicate.

#### **Art. 1066**

2. Copies  
a. Form and  
effect

1 Every holder of a bill of exchange is entitled to make copies of it.

2 The copy must be an exact reproduction of the original instrument with endorsements and all other notes and comments appended thereto. It must bear an indication of how far the copy extends.

3 The copy may be endorsed and have a declaration of guarantee added to it in the same manner and with the same effects as the original bill.

#### **Art. 1067**

b. Surrender of  
the original bill

1 The custodian of the original bill must be indicated on the copy. The custodian is obliged to surrender the original bill to the rightful holder of the copy.

2 Where he refuses to surrender it, the holder has right of recourse against the endorsers of the copy and against persons who have appended a declaration of guarantee to it only after arranging for protest to be made, thereby confirming that the original bill was not surrendered to him on request.

3 Where the original bill bears the comment “henceforward endorsements valid only if made on copy” or a comment to that effect appended to the last endorsement before the copy was made, any subsequent endorsement added to the original bill is void.

## XI. Amendments to the Bill of Exchange

### Art. 1068

Where the text of a bill of exchange is amended, those persons who append their signature to the bill after such amendment are liable in accordance with the amended text. Those who signed earlier are liable in accordance with the original text.

## XII. Time Limits

### Art. 1069

1. Limitation periods

<sup>1</sup> The claims against the acceptor under the bill of exchange become time-barred three years after the maturity date.

<sup>2</sup> The claims of the holder against the endorser and against the drawer become time-barred one year after the date on which timely protest was made or, where the bill bears the comment “No protest”, one year after the maturity date.

<sup>3</sup> The claims of one endorser against other endorsers and against the drawer become time-barred six months after the date on which the bill of exchange was honoured by the endorser or the claim based on the bill was asserted against him.

### Art. 1070

2. Interruption  
a. Grounds

The limitation period is interrupted by commencement of action on the bill, submission of an application for debt enforcement proceedings, service of a third party notice or petition in insolvency.

### Art. 1071

b. Effects

<sup>1</sup> The interruption of the limitation period is effective only against the party in regard to whom the fact causing the interruption occurred.

<sup>2</sup> On interruption of the limitation period, a new limitation period of the same duration commences.



### XIII. Cancellation

#### Art. 1072

1. Provisional measures

<sup>1</sup> A person who has lost a bill of exchange may request the court to prohibit the drawee from paying the bill.<sup>611</sup>

<sup>2</sup> In serving the attachment order, the court authorises the drawee to deposit the bill amount on the maturity date and designates the place where it is to be deposited.

#### Art. 1073

2. Known holder

<sup>1</sup> Where the holder of the bill of exchange is known, the court sets the applicant an appropriate time limit within which to bring action for surrender thereof.

<sup>2</sup> Where the applicant fails to bring such action within the time limit, the court lifts the attachment order imposed on the drawee.

#### Art. 1074

3. Unknown holder  
a. Duties of the applicant

<sup>1</sup> Where the holder of the bill of exchange is known, the court may be asked to cancel it.

<sup>2</sup> The party applying for cancellation must satisfy the court that he possessed and lost the bill of exchange and produce either a copy of the bill or information on its essential terms.

#### Art. 1075

b. Public call for presentation

Where the court is satisfied that the applicant was in possession of the bill of exchange but has since lost it, it issues a public notice calling on the unknown holder to come forward and present the bill within a specified time limit, failing which it will declare the bill cancelled.

#### Art. 1076

c. Time limits

<sup>1</sup> The time limit for presentation must be at least three months and no more than one year.

<sup>2</sup> However, the court is not bound by the minimum duration of three months if, in the case of overdue bills, the statutory limitation period would expire before three months have elapsed.

<sup>3</sup> The time limit for overdue bills commences on the date of the first public notice, and the time limit for bills that are not overdue commences on the maturity date.

<sup>611</sup> Amended by Annex No 5 of the Civil Jurisdiction Act of 24 March 2000, in force since 1 Jan 2001 (AS 2000 2355; BBl 1999 2829).

**Art. 1077**

- d. Publication
- <sup>1</sup> The call for presentation of the bill of exchange must be published three times in the Swiss Official Gazette of Commerce.
- <sup>2</sup> In special cases the court may adopt other appropriate means for publicising the call for presentation.

**Art. 1078**

4. Effect
- a. If the bill is presented
- <sup>1</sup> Where the lost bill of exchange is presented, the court sets the applicant a time limit within which to bring action for surrender of the bill.
- <sup>2</sup> Where the applicant fails to bring action within such time limit, the court returns the bill of exchange and lifts the attachment order.

**Art. 1079**

- b. If the bill is not presented
- <sup>1</sup> Where the lost bill of exchange is not presented within the fixed time limit, the court must pronounce its cancellation.
- <sup>2</sup> Following cancellation of the bill of exchange, the applicant may still assert his claim on the bill against the acceptor.

**Art. 1080**

5. Court orders
- <sup>1</sup> Even before the cancellation, the court may order the acceptor to deposit the bill amount or even to pay it against security.
- <sup>2</sup> Such security is liable to the bona fide acquirer of the bill of exchange. It is released if the bill of exchange is cancelled or the claims on the bill are otherwise extinguished.

**XIV. General Provisions****Art. 1081**

1. Setting time limits
- a. Holidays
- <sup>1</sup> Where the maturity date of a bill of exchange falls on a Sunday or a public holiday, payment may not be demanded until the following working day. Likewise, all other actions relating to the bill of exchange, and in particular presentation for acceptance and protest, may take place only on a working day.
- <sup>2</sup> Where the last day of a time limit within which such an action must be taken falls on a Sunday or a public holiday<sup>612</sup>, the time limit is

<sup>612</sup> In relation to the statutory time limits under federal law and the time limits fixed by authorities by virtue of federal law, Saturday is now regarded as equivalent to a public holiday (Art. 1 of the FA of 21 June 1963 on the Application of Limitation Periods to Saturdays; SR 173.110.3).

extended to include the next working day. Holidays falling within the time limit are included when computing it.

#### **Art. 1082**

b. Computing time limits

When computing statutory time limits or time limits indicated on the bill of exchange, the day on which they commence is not included.

#### **Art. 1083**

c. Exclusion of days of respite

Days of respite, whether statutory or by court order, are not recognised.

#### **Art. 1084**

2. Place for actions in connection with bills of exchange

1 The correct place at which to present bills of exchange for acceptance or payment, to make protest, to submit a request for issue of a duplicate bill and to take all other bill-related actions in respect of a specific person is that person's business premises or, where none exist, his private address.

2 Such business premises or address must be ascertained with all due diligence.

3 However, if inquiries to the police or post office of the relevant locality are unsuccessful, no further investigation is required.

#### **Art. 1085**

3. Signature by hand; blind person's signature

1 Declarations in respect of bills of exchange must be signed by hand.

2 The signature by hand may not be replaced by a mechanical reproduction thereof, by a mark, even if authenticated, or by any other form of authentication by notary.

3 The signature of a blind person must be authenticated.

### **XV. Applicable Jurisdiction**

#### **Art. 1086**

1. Capacity to incur liability as a party to a bill

1 A person's capacity to incur liability as a party to a bill is determined according to the law of the country of which he is a citizen. Where such law provides that the law of a different country is definitive, the latter is applicable.

2 A person who, under the law stipulated in the previous paragraph, lacks capacity to incur liability as a party to a bill is nonetheless obliged if he appends his signature in the territory of a country under whose law he would have such capacity.

**Art. 1087**

2. Form and time limits of declaration on bills of exchange  
a. In general

<sup>1</sup> The form of a declaration on a bill of exchange is determined according to the law of the country in whose territory the declaration was signed.

<sup>2</sup> However, where a declaration on a bill of exchange that is invalid under the previous paragraph would be valid under the law of the country in whose territory a subsequent declaration is signed, the validity of the later declaration is not affected by any formal defects of the earlier declaration.

<sup>3</sup> Similarly, a declaration on a bill of exchange given by one Swiss national abroad is valid in relation to another Swiss national in Switzerland provided it satisfies the formal requirements laid down by Swiss law.

**Art. 1088**

b. Actions to exercise and safeguard rights under bills of exchange

The formal requirements and time limits for protest and the formal requirements for other actions to exercise or safeguard rights under bills of exchange are determined according to the law of the country in whose territory the protest is to be made or the action to be taken.

**Art. 1089**

c. Exercise of right of recourse

The time limits for exercising rights of recourse are determined for all interested parties by the law of the place in which the bill of exchange was drawn.

**Art. 1090**

3. Effect of declarations on bills of exchange  
a. In general

<sup>1</sup> The effects of declarations of commitment made by the acceptor of a bill of exchange and by the maker of a promissory note are determined according to the law of the bill domicile or place of payment.

<sup>2</sup> The effects of other declarations on bills of exchange are determined according to the law of the country in whose territory the declarations were signed.

**Art. 1091**

b. Partial acceptance and part payment

The law of the bill domicile determines whether the acceptance of a bill of exchange may be limited to part of the bill amount and whether the holder is or is not obliged to accept a part payment.

**Art. 1092**

c. Payment

The payment of a bill of exchange at maturity, in particular the computation of the maturity date and the payment date, and the payment of

bills denominated in a foreign currency are determined according to the law of the country in whose territory the bill is domiciled.

### **Art. 1093**

d. Claims for unjust enrichment

Claims for unjust enrichment against the drawee, the domiciliate and the person or firm for whose account the drawer drew the bill are determined according to the law of the country in whose territory these persons are resident.

### **Art. 1094**

e. Devolution of cover

The law of the place of issue determines whether the holder of a bill of exchange acquires the underlying claim.

### **Art. 1095**

f. Annulment

The law of the bill domicile determines the measures to be taken in the event of the loss or theft of a bill of exchange.

## **C. The Promissory Note**

### **Art. 1096**

1. Requirements

A promissory note contains:

1. the designation ‘promissory note’ in the text of the instrument and in the language in which it is issued;
2. the unconditional promise to pay a certain sum of money;
3. the due date;
4. the place of payment;
5. the name of the person to whom or to whose order payment is to be made;
7. the date on which and place at which the note is made;
8. the maker’s signature.

### **Art. 1097**

2. Required content lacking

<sup>1</sup> An instrument missing one of the elements stipulated in the previous Article is not deemed a promissory note, except in the cases described in the following paragraphs.

<sup>2</sup> A promissory note containing no indication of the due date is deemed a sight bill.

<sup>3</sup> Where no other specific place is mentioned, the place at which the note is made is deemed both the place of payment and the domicile of the maker.

<sup>4</sup> A promissory note without any indication of the place in which it was made is deemed made at the place indicated together with the name of the maker.

### Art. 1098

3. Reference to bill of exchange

<sup>1</sup> The provisions governing the following aspects of bills of exchange also apply to promissory notes, unless they run counter to the essential nature of the latter:

endorsement (Art. 1001–1010);

maturity (Art. 1023–1027);

payment (Art. 1028–1032);

recourse for non-payment (Art. 1033–1047, 1049–1051);

payment for honour (Art. 1054, 1058–1062);

copies (Art. 1066 and 1067);

amendments (Art. 1068);

time limits (Art. 1069–1071);

annulment (Art. 1072–1080);

public holidays, computation of time limits, exclusion of days of respite, place for actions in connection with bills of exchange, and signatures (Art. 1081–1085).

<sup>2</sup> Further, promissory notes are subject to the provisions governing bills of exchange in relation to bills domiciled with a third party or at a place other than the drawee's domicile (Art. 994 and 1017), the interest rate comment (Art. 995), discrepancies in the specification of the amount (Art. 996), the consequences of invalid signatures (Art. 997) or of signatures by persons lacking power of representation or exceeding such power (Art. 998), and blank bills (Art. 1000).

<sup>3</sup> Likewise, promissory notes are subject to the provisions governing bills of exchange in relation to bill guarantees (Art. 1020–1022); in the case of Article 1021 paragraph 4, where the declaration does not indicate the party for whom it is made, the bill guarantee is deemed given for the maker of the promissory note.

### Art. 1099

4. Liability of the maker; presentation for sight

<sup>1</sup> The maker of a promissory note is liable in the same manner as the acceptor of a bill of exchange.

<sup>2</sup> Promissory notes made out for a specified time after sight must be presented for sight to the maker within the time limits stipulated in Article 1013. Such sight must be confirmed by the maker on the promissory note together with the date and the maker's signature. The fixed period after sight commences on the date on which the sight comment

is appended. Where the maker refuses to confirm sight and the date, this fact must be established by means of protest (Art. 1015); in this case, the fixed period after sight commences on the date on which protest is made.

## Section Five: The Cheque

### I. Issue and Formal Requirements of Cheques

#### Art. 1100

1. Requirements A cheque contains:

1. the designation 'cheque' in the text of the instrument and in the language in which it is issued;
2. the unconditional instruction to pay a certain sum of money;
3. the name of the person who is to pay (drawee);
4. the place of payment;
5. the date and the place of issue;
8. the drawer's signature.

#### Art. 1101

2. Required content lacking

<sup>1</sup> An instrument missing one of the elements stipulated in the previous Article is not deemed a cheque, except in the cases described in the following paragraphs.

<sup>2</sup> Where no other specific place is mentioned, the place indicated together with the name of the drawee is deemed the place of payment. Where several places are indicated together with the name of the drawee, the cheque is payable at the place mentioned first.

<sup>3</sup> A cheque containing no indication of place of issue is deemed payable at the place where the drawee has his head office.

<sup>4</sup> A cheque containing no indication of the place of issue is deemed issued at the place indicated together with the name of the issuer.

#### Art. 1102

3. Capacity to act as drawee

<sup>1</sup> On cheques payable in Switzerland, only a banker may be designated as the drawee.

<sup>2</sup> A cheque drawn on another person is deemed to be merely an instrument ordering payment.

4. Cover  
requirement

### Art. 1103

<sup>1</sup> A cheque may be issued only where the drawer holds assets with the drawee and has the right to dispose of such assets by means of cheques pursuant to an explicit or tacit agreement. However, the instrument's validity as a cheque is not affected by any failure to comply with these provisions.

<sup>2</sup> Where the drawer has assets with the drawee covering only a portion of the cheque amount, the drawee is obliged to pay such portion.

<sup>3</sup> A person issuing a cheque without being authorised by the drawee to dispose of the instructed amount must reimburse the bearer for any damage so caused and, in addition, five per cent of the uncovered portion of the instructed amount.

5. Exclusion of  
acceptance

### Art. 1104

The cheque may not be accepted. An acceptance comment appended to the cheque is deemed unwritten.

6. Designation of  
payee

### Art. 1105

<sup>1</sup> The cheque may be made payable to:  
a specific person, with or without the explicit comment "to order";  
a specific person, with the comment "not to order" or a comment to that effect;  
the bearer.

<sup>2</sup> Where the cheque designates a specific person as payee with the added comment "or presenter" or a comment to that effect, the cheque is deemed made out to the bearer.

<sup>3</sup> A cheque with no payee indicated is deemed payable to the bearer.

7. Interest  
comment

### Art. 1106

An interest comment appended to the cheque is deemed unwritten.

8. Paying agents,  
domiciled  
cheques

### Art. 1107

The cheque may be made payable by a third party, at the drawee's domicile or at another place, providing the third party is a banker.

## II. Transfer

### Art. 1108

1. Transferability

<sup>1</sup> A cheque made payable to a specific person with or without the explicit comment "to order" may be transferred by endorsement.



<sup>2</sup> A cheque made payable to a specific person with or without the explicit comment “not to order” or with a comment to that effect may be transferred only subject to the formal requirements and with the effects of a normal assignment.

<sup>3</sup> The endorsement may also be made out to the drawer or to any other party liable for it. Such persons may endorse the cheque further.

### **Art. 1109**

2. Requirements <sup>1</sup> The endorsement must be unconditional. Conditions attached to the endorsement are deemed unwritten.

<sup>2</sup> A partial endorsement is void.

<sup>3</sup> Likewise, an endorsement by the drawee is void.

<sup>4</sup> An endorsement to the bearer is deemed a blank endorsement.

<sup>5</sup> An endorsement to the drawee is deemed merely a receipt, unless the drawee has several branch offices and the endorsement is made out to a different office from that on which the cheque is drawn.

### **Art. 1110**

3. Proof of  
bearer's  
entitlement

A person possessing a cheque transferred by endorsement is deemed the holder in due course providing he can demonstrate his entitlement by means of an uninterrupted sequence of endorsements, even where the last is a blank endorsement. Deleted endorsements are deemed unwritten. Where a blank endorsement is followed by a further endorsement, it is presumed that the person who issued this endorsement acquired the bill by means of the blank endorsement.

### **Art. 1111**

4. Bearer cheque <sup>1</sup> An endorsement on a bearer cheque renders the endorser liable in accordance with the provisions governing recourse, albeit without transforming the instrument into a cheque to order.

### **Art. 1112**

5. Lost cheques <sup>1</sup> Where the cheque was somehow lost by a former bearer, a new bearer who has gained possession of the cheque, whether it is a bearer cheque or a cheque transferable by endorsement and the bearer can demonstrate his entitlement in accordance with Article 1110, is obliged to surrender it only if he acquired it in bad faith or was guilty of gross negligence when he acquired it.

6. Rights  
stemming from  
subsequent  
endorsement

### Art. 1113

<sup>1</sup> Where the cheque was endorsed only after protest has been made or equivalent action taken or after expiry of the time limit for presentation, the endorsement only has the effects of a normal assignment.

<sup>2</sup> Until the opposite is proven, it is presumed that an undated endorsement was made on the cheque before protest was made or equivalent action taken or before the time limit for presentation expired.

## III. Cheque Guarantees

### Art. 1114

<sup>1</sup> Payment of the cheque amount may be secured in part or in full by means of a cheque guarantee.

<sup>2</sup> Such security may be provided by a third party, with exception of the drawee, or even by a person whose signature has already been appended to the cheque.

## IV. Presentation and Payment

### Art. 1115

1. Maturity

<sup>1</sup> The cheque is payable on sight. Any contrary indication is deemed unwritten.

<sup>2</sup> A cheque presented for payment prior to the issue date indicated on the cheque is payable on the date on which it is presented.

### Art. 1116

2. Presentation  
for payment

<sup>1</sup> A cheque payable in the country in which it was issued must be presented for payment within eight days.

<sup>2</sup> A cheque payable in a country other than the country in which it was issued must be presented within 20 days where the place of issue and place of payment are in the same continent and within 70 days where they are on different continents.

<sup>3</sup> For this purpose, a cheque issued in a European country and payable in a country on the Mediterranean Sea, or vice versa, counts as a cheque issued and payable in the same continent.

<sup>4</sup> The time limits stipulated above commence on the date indicated on the cheque as the issue date.

- Art. 1117**
3. Computation by the old method  
Where a cheque is payable at a place where the calendar is different from that of the place of issue, the issue date is determined according to the calendar of the place of payment.
- Art. 1118**
4. Delivery to clearing house  
Delivery of the cheque to a clearing house recognised by the Swiss National Bank is equivalent to presentation for payment.<sup>613</sup>
- Art. 1119**
5. Revocation  
a. In general
- 1 A revocation of the cheque takes effect only after expiry of the time limit for presentation.
- 2 Where the cheque is not revoked, the drawee may make payment even after expiry of the time limit for presentation.
- 3 Where the drawer contends that he or a third party lost the cheque, he may forbid the drawee to cash it.
- Art. 1120**
- b. Death, incapacity, bankruptcy  
The validity of the cheque is unaffected even where the drawer dies, loses his capacity to act or becomes bankrupt after the cheque was issued.
- Art. 1121**
6. Verification of endorsements  
A drawee honouring a cheque transferred by endorsement is obliged to check that the sequence of endorsements is correct but is not required to verify the signatures of the endorsers.
- Art. 1122**
7. Payment in foreign currency
- 1 Where the cheque is denominated in a currency other than that of the place of payment, the cheque amount may be paid in the national currency at its value as at the date of presentation. Where payment is not made on presentation, the bearer is free to choose whether the cheque amount is converted into the national currency at the rate applicable on the date of presentation or the rate applicable on the payment date.
- 2 The value of the foreign currency is determined according to customary commercial practice at the place of payment. However, the drawer may stipulate an exchange rate for the bill amount on the bill of exchange.

<sup>613</sup> Amended by Annex No II 2 of the National Bank Act of 3 Oct. 2003, in force since 1 May 2004 (AS 2004 1985; BBl 2002 6097).

<sup>3</sup> The provisions of the two previous paragraphs are not applicable if the drawer has stipulated payment in a specified currency (actual currency clause).

<sup>4</sup> Where the cheque is denominated in a currency which has the same name but a different value in the country in which the cheque was issued and that in which it is payable, the presumption is that the currency meant is that of the place of payment.

## V. The Crossed Cheque and the Account-Payee-Only Cheque

### Art. 1123

1. Crossed  
cheques  
a. Definition

<sup>1</sup> The drawer and any bearer may cross the cheque with the effects envisaged in Article 1124.

<sup>2</sup> A cheque is crossed by drawing two parallel lines on its obverse. Such crossing may be general or specific.

<sup>3</sup> The crossing is general if no indication or the comment “banker” or a comment to that effect is inserted between the two lines; it is specific if the name of a banker is inserted between the two lines.

<sup>4</sup> A general crossing may be converted into a specific crossing, but not vice versa.

<sup>5</sup> Any deletion of the crossing or of the name of the designated banker is deemed not done.

### Art. 1124

b. Effects

<sup>1</sup> A generally crossed cheque may be paid by the drawee only to a banker or a client of the drawee.

<sup>2</sup> A specifically crossed cheque may be paid by the drawee only to the designated banker or, where the latter is himself the drawee, to his clients. However, the designated banker may entrust collection of the cheque to another banker.

<sup>3</sup> A banker may acquire a crossed cheque only from one of his clients or from another banker. Further, he may collect such cheque only for the account of the aforementioned persons.

<sup>4</sup> Where a cheque has been specifically crossed more than once, the drawee may honour the cheque only where it has been crossed not more than twice and one of the crossings was done for the purpose of collection by means of delivery to a clearing house.

<sup>5</sup> A drawee or banker acting in contravention of the above provisions is liable for any losses caused thereby, albeit only up to the cheque amount.

2. Account-payee-only cheques  
a. In general

### Art. 1125

1 The drawer and any bearer of a cheque may prohibit payment of the cheque in cash by appending the comment “account payee only” or a comment to that effect diagonally across the obverse of the cheque.

2 In this case the drawee may honour the cheque only by crediting the amount to an account (credit, transfer, debit settlement). The account credit is deemed payment.

3 Any deletion of the comment “account payee only” is deemed not to have been done.

4 A drawee acting in contravention of the above provisions is liable for any losses caused thereby, albeit only up to the cheque amount.

b. Bearer’s rights in the event of insolvency, suspension of payments, compulsory execution

### Art. 1126

1 However, where the drawee has been declared insolvent or has suspended its payments or debt enforcement proceedings have been brought against it without success, the bearer of an account-payee-only cheque has the right to demand cash payment of the cheque by the drawee and has a right of recourse.

2 The same applies in the event that the bearer cannot obtain the account credit from the drawee as a result of measures taken pursuant to the Federal Act of 8 November 1934 on Banks and Savings Banks<sup>614</sup>.

c. Bearer’s rights in the event of refusal of account credit or settlement

### Art. 1127

Further, the bearer of an account-payee-only cheque has a right of recourse where he can show that the drawee has refused to make the account credit unconditionally or that the cheque has been declared unfit for settlement of the bearer’s obligations by the clearing house of the place of payment.

## VI. Recourse for Non-Payment

1. Bearer’s rights of recourse

### Art. 1128

The bearer may have recourse against the endorser, the drawer and the other parties liable for the cheque if it is not honoured on timely presentation and such refusal of payment has been established:

1. by public deed (protest), or
2. by means of a written and dated declaration made by the drawee on the cheque, including the date of presentation, or

3. by means of a written and dated declaration made by a clearing house to the effect that the cheque was delivered in good time and not paid.

### Art. 1129

2. Protest, time limits

<sup>1</sup> The protest or equivalent declaration must be made before the time limit for presentation expires.

<sup>2</sup> Where the cheque is presented on the last day of the time limit, the protest or equivalent declaration may still be made on the following working day.

### Art. 1130

3. Object of recourse

By way of recourse, the bearer may claim:

1. the cheque amount, provided the cheque has not been honoured;
2. interest at a rate of six per cent since the date of presentation;
3. the costs of the protest or equivalent declaration and of notifications, plus other expenses;
4. a commission of not more than one-third of one per cent.

### Art. 1131

4. Exceptions in the case of force majeure

<sup>1</sup> Where insuperable obstacles (statutory provisions enacted by a state or some other instance of force majeure) militate against the timely presentation of the cheque or timely protest or equivalent declaration, the time limits for such actions are extended.

<sup>2</sup> The bearer is obliged to notify the immediately preceding endorser of the force majeure event without delay and to note such notification together with the date and place and his signature on the cheque or an annex thereto; in other respects the provisions set out in Article 1042 are applicable.

<sup>3</sup> Once the force majeure ceases to apply, the holder must present the cheque for acceptance or for payment without delay and, where necessary, make protest or similar declaration.

<sup>4</sup> In the event that the force majeure lasts for longer than 15 days after the date on which the bearer himself notified the preceding endorser of the force majeure event prior to expiry of the time limit for presentation, recourse may be had without need for presentation or protest or similar declaration.

<sup>5</sup> Facts pertaining purely to the person of the bearer or a person charged with the task of presenting the cheque or making protest or

arranging for an equivalent declaration do not count as force majeure events.

## **VII. Forged Cheques**

### **Art. 1132**

The losses arising from payment of a forged or falsified cheque are borne by the drawee, provided that the drawer named on the cheque is not at fault, such as through negligence in the safekeeping of blank cheque forms entrusted to him.

## **VIII. Duplicates of a Cheque**

### **Art. 1133**

Cheques may be issued in several identical duplicates if they are not made out to the bearer and are payable in a country other than the country of issue or in an overseas territory belonging to the country of issue, or vice versa, or are both issued and payable in an overseas territory, or are issued in one overseas territory and payable in a different overseas territory belonging to the same country. Such duplicates must be given serial numbers within the text on the instrument; otherwise, each duplicate counts as a separate cheque.

## **IX. Time Limits**

### **Art. 1134**

<sup>1</sup> The bearer's rights of recourse against the endorser, the drawer and the other parties liable become time-barred six months after the time limit for presentation expires.

<sup>2</sup> The rights of recourse of one liable party against another become time-barred six months after the date on which the cheque was honoured by such party or the claim based on the cheque was asserted against him.

## X. General Provisions

### Art. 1135

1. Definition of 'banker'

For the purposes of this Section, the term 'banker' is understood to mean any institution subject to the Federal Act of 8 November 1934<sup>615</sup> on Banks and Savings Banks.

### Art. 1136

2. Setting time limits

a. Holidays

<sup>1</sup> The presentation and protest of a cheque must take place on a working day.

<sup>2</sup> Where the last day of a time limit within which an action in connection with the cheque must be taken, in particular presentation, protest or an equivalent declaration, falls on a Sunday or a public holiday<sup>616</sup>, the time limit is extended to include the next working day.

Holidays falling within the time limit are included when computing it.

### Art. 1137

b. Computing time limits

When computing the time limits envisaged in this law, the day on which they commence is not included.

## XI. Applicable Jurisdiction

### Art. 1138

1. Capacity to act as drawee of a cheque

<sup>1</sup> A person's capacity to act as drawee of a cheque is determined according to the law of the country in which it is payable.

<sup>2</sup> Where under such law the cheque is void for reasons pertaining to the person of the drawee, obligations are nonetheless binding if they arise from signatures appended to the cheque in countries where the law does not envisage nullity for such reasons.

### Art. 1139

2. Form and time limits for declarations on cheques

<sup>1</sup> The form of a declaration on a cheque is determined according to the law of the country in whose territory such declaration was signed. However, compliance with the formal requirements laid down by the law of the place of payment is sufficient.

<sup>615</sup> SR 952.0

<sup>616</sup> In relation to the statutory time limits under federal law and the time limits fixed by authorities by virtue of federal law, Saturday is now regarded as equivalent to a public holiday (Art. 1 of the FA of 21 June 1963 on the Application of Limitation Periods to Saturdays; SR 173.110.3).



<sup>2</sup> Where a declaration on a cheque that is invalid pursuant to the previous paragraph would be valid under the law of the country in whose territory a subsequent declaration is signed, the validity of the later cheque declaration is not affected by any formal defects of the earlier declaration.

<sup>3</sup> Similarly, a declaration on a cheque made by one Swiss national abroad is valid as against another Swiss national in Switzerland providing it satisfies the formal requirements laid down by Swiss law.

#### **Art. 1040**

3. Effect of  
cheque declara-  
tions  
a. Law of the  
place of issue

<sup>1</sup> The effects of cheque declarations are determined pursuant to the law of the country in whose territory such declarations were signed.

#### **Art. 1141**

b. Law of the  
place of payment

The law of the country in whose territory the cheque is payable determines:

1. whether the cheque is necessarily payable on sight or whether it may be drawn for a specified time after sight and what the effects are if a date later than the real issue date is indicated on the cheque;
2. the time limit for presentation;
3. whether a cheque may be accepted, certificated, confirmed or given a mark of approval and what the effects of such comments are;
4. whether the bearer may request part payment and whether he must accept part payment;
5. whether a cheque may be crossed or have the comment “account payee only” or an equivalent comment appended to it and what the effects of such crossing or comment are;
6. whether the bearer has specific rights to the cover and what the nature of such rights is;
7. whether the drawer may revoke the cheque or protest against payment of the cheque;
8. the measures to be taken in the event of the loss or theft of the cheque;
9. whether a protest or equivalent declaration is required to preserve the right of recourse against the endorser, the drawer and the other parties liable for the cheque.

c. Law of  
domicile

### **Art. 1142**

A claim for unjust enrichment against the drawee or the domiciliate is determined according to the law of the country in whose territory these persons are resident.

## **XII. Applicability of the Law on Bills of Exchange**

### **Art. 1143**

<sup>1</sup> The following provisions of the law on bills of exchange are also applicable to cheques:

1. Article 990 on the capacity to incur liability as party to a bill;
2. Article 993 on bills of exchange made out to own order, drawn on the drawer and for the account of a third party;
3. Articles 996–1000 on discrepancies in the specification of the bill amount, signatures of persons lacking capacity to incur liability as parties to bills, unauthorised signatures, liability of the drawer and blank bills;
4. Articles 1003–1005 on endorsements;
5. Article 1007 on defences;
6. Article 1008 on the rights under procuration endorsement;
7. Articles 1021 and 1022 on form and effects of bill guarantees;
8. Article 1029 on the right to receipts and part payments;
9. Articles 1035–1037 and 1039–1041 on protest;
10. Article 1042 on notification;
11. Article 1043 on the waiver of protest;
12. Articles 1044 on the joint and several liability of the parties;
13. Articles 1046 and 1047 on the right of recourse on payment of the bill of exchange and the right to take possession of bills of exchange, protest and receipts;
14. Article 1052 on claims for unjust enrichment;
15. Article 1053 on devolution of cover;
16. Article 1064 on the relationship between duplicates;
17. Article 1068 on amendments;
18. Articles 1070 and 1071 on interruption of limitation periods;
19. Articles 1072–1078 and 1079 paragraph 1 on cancellation;

20. Articles 1083–1085 on exclusion of days of respite, the place for actions in connection with bills of exchange and signatures by hand;
21. Articles 1086, 1088 and 1089 on applicable jurisdiction with regard to capacity to incur liability as a party to bills, actions to exercise and safeguard rights under bills of exchange and exercise of the right of recourse.
- <sup>2</sup> None of the provisions relating to acceptance of bills of exchange laid down in these Articles is applicable.
- <sup>3</sup> With regard to their applicability to cheques, Article 1042 paragraph 1, Article 1043 paragraph 1 and 3 and Article 1047 are supplemented in the sense that a declaration equivalent to protest as defined in Article 1128 letters 2 and 3 may substitute for protest itself.

### **XIII. Reservation of Specific Law**

#### **Art. 1144**

The special provisions governing Swiss post office cheques are reserved.

### **Section Six: Bill-like Securities and Other Instruments to Order**

#### **Art. 1145**

A. In general  
I. Requirements

A negotiable security is deemed an instrument to order if it is made out to order or declared by law to be an instrument to order.

#### **Art. 1146**

II. Defences of the obligor

<sup>1</sup> Against a claim deriving from an instrument to order, the obligor may plead only such defences as contest the validity of the instrument or arise from the instrument itself and those available to him personally against the respective obligee.

<sup>2</sup> Defences based on the direct relations between the obligor and a former bearer are admissible where the bearer intentionally acted to the detriment of the obligor when acquiring the security.

B. Bill-like securities  
 I. Payment instructions to order  
 1. In general

### Art. 1147

Where a payment instruction is not designated as a bill of exchange in the text appearing on the instrument itself but is expressly made out to order and satisfies all the other requirements of a bill of exchange, it counts as a bill of exchange.

2. No duty to accept

### Art. 1148

<sup>1</sup> The payment instruction to order must not be presented for acceptance.

<sup>2</sup> If it is nevertheless presented but acceptance is refused, the bearer does not have right of recourse on these grounds.

3. Consequences of acceptance

### Art. 1149

<sup>1</sup> Where the payment instruction to order is accepted voluntarily, the acceptor of the payment instruction counts as the acceptor of a bill of exchange.

<sup>2</sup> However, the bearer may not have recourse before maturity if the instructed party has been declared insolvent or has suspended his payments or compulsory execution has been levied on his assets without success.

<sup>3</sup> Similarly, the bearer may not have recourse before maturity if the instructing party has been declared insolvent.

4. No enforcement of bills of exchange

### Art. 1150

The provisions of the Debt Collection and Bankruptcy Act of 11 April 1889<sup>617</sup> governing the enforcement of bills of exchange do not apply to payment instructions to order.

II. Promise to pay to order

### Art. 1151

<sup>1</sup> Where a promise to pay is not designated as a promissory note in the text appearing on the instrument itself but is expressly made out to order and satisfies all the other requirements of a promissory note, it counts as a promissory note.

<sup>2</sup> However, the provisions governing payment for honour do not apply to promises to pay to order.

<sup>3</sup> The provisions of the Debt Collection and Bankruptcy Act of 11 April 1889<sup>618</sup> governing the enforcement of bills of exchange do not apply to promises to pay to order.

<sup>617</sup> SR 281.1

<sup>618</sup> SR 281.1

C. Other  
endorsable  
securities

### Art. 1152

<sup>1</sup> Instruments whereby the signatory undertakes to pay certain sums of money or deliver certain quantities of fungibles with reference to place, time and total amount may, if they are expressly made out to order, be transferred by endorsement.

<sup>2</sup> These and other endorsable instruments, such as warehouse warrants, bills of lading, etc., are subject to the provisions of the law on bills of exchange governing the form of the endorsement, proof of the bearer's entitlement, annulment and the bearer's duty to surrender the instrument.

<sup>3</sup> However, the provisions governing rights of recourse on bills of exchange do not apply to such instruments.

## Section Seven: Documents of Title to Goods

### Art. 1153

A. Requirements

Documents of title to goods issued by a warehouse keeper or carrier as negotiable securities must bear:

1. the place and date of issue and the signature of the issuer;
2. the name and address of the issuer;
3. the name and address of the depositor or sender of the goods;
4. an inventory of the stored or despatched goods by description, volume and identification marks;
5. the fees and remuneration payable or paid in advance;
6. any special agreements between the parties concerning the handling of the goods;
7. the number of duplicates of the document of title to goods;
8. the persons with power of disposal, with indication of names or to order or as bearer.

### Art. 1154

B. The warrant

<sup>1</sup> Where one of two or more documents of title to goods is to serve the purpose of establishing a lien, it must be designated as a warrant and in all other respects take the form of a document of title to goods.

<sup>2</sup> The issue of the warrant must be noted on the other duplicates along with every pledge made, including the claim amount and due date.

C. Significance  
of the formal  
requirements

### Art. 1155

<sup>1</sup> Bills and certificates issued in respect of stored goods or freight that do not satisfy the formal requirements of documents of title to goods are not recognised as negotiable securities, but are deemed to be merely receipts or other documents in proof.

<sup>2</sup> Bills and certificates issued by warehouse keepers without the legally required approval from the competent authority are recognised as negotiable securities provided they satisfy the statutory formal requirements. The issuer is liable to an administrative fine of up to 1,000 francs to be imposed by the competent cantonal authority.

## Title Thirty-Four: Bonds

### Section One: Obligation to publish a Prospectus when issuing Bonds

#### Art. 1156

<sup>1</sup> Bonds may be offered for public subscription or sale on the stock exchange only on the basis of a prospectus.

<sup>2</sup> The provisions governing prospectuses for issues of new shares apply *mutatis mutandis*; in addition, the prospectus must provide more detailed information on the bonds and in particular on the interest and redemption conditions, the special collateral posted for the bonds and, where applicable, representation of the bond creditors.

<sup>3</sup> In the event that bonds are issued without a prospectus that complies with these provisions or that the prospectus contains inaccurate information or information that fails to satisfy the statutory requirements, all persons involved in such non-compliance, whether intentionally or negligently, are jointly and severally liable for the damage arising.

### Section Two:<sup>619</sup> Community of Bond Creditors

#### Art. 1157

A. Requirements

<sup>1</sup> Where bonds with uniform conditions are offered directly or indirectly for public subscription by a borrower whose domicile or commercial office is in Switzerland, by operation of law the creditors form a community of creditors.

<sup>619</sup> Amended by No I of the FA of 1. April 1949, in force since 1 Jan 1950 (AS 1949 I 791 801; BBl 1947 III 869). See also the Final Provisions of the second Sec. of Title XXXIV, at the end of this Code.

<sup>2</sup> Where several different issues are offered, the creditors of each issue form a separate community of creditors.

<sup>3</sup> The provisions of this Chapter do not apply to bonds issued by the Confederation, cantons, municipalities and other public sector corporations and entities.

### **Art. 1158**

B. Bond  
representative  
I. Appointment

<sup>1</sup> Representatives appointed under the bond issue conditions are, unless otherwise provided, deemed to be representatives of both the community of creditors and the borrower.

<sup>2</sup> The creditors' meeting may elect one or more representatives for the community of creditors.

<sup>3</sup> Unless otherwise provided, multiple representatives exercise their powers of representation jointly.

### **Art. 1159**

II. Powers  
1. In general

<sup>1</sup> The representative has such powers as are conferred on him by law, the bond issue conditions or the creditors' meeting.

<sup>2</sup> His duties are to request that the borrower convene a creditors' meeting where the conditions for such convocation obtain, to implement its resolutions and to represent the community of creditors within the bounds of the powers conferred on him.

<sup>3</sup> To the extent that the representative is authorised to assert the creditors' rights, the individual creditors are not entitled to exercise their rights independently.

### **Art. 1160**

2. Monitoring of  
the borrower

<sup>1</sup> Where the borrower is in arrears in the fulfilment of his obligations under the bond issue, the representative of the community of creditors is entitled to obtain from the borrower all information of interest to the community of creditors.

<sup>2</sup> On the same conditions, where the borrower is a company limited by shares, partnership limited by shares, limited liability company or cooperative, the representative may participate in an advisory capacity in the meetings of its governing bodies to the extent that the agenda items under discussion relate to the interests of the bond creditors.

<sup>3</sup> The representative must be invited to such meetings and is entitled to receive the background documentation to be discussed at such meetings in good time.

**Art. 1161**

3. In the case of bonds secured by pledge

<sup>1</sup> Where a representative of the borrower and the creditors has been appointed for a bond issue secured by a land charge or a charge on chattels, he has the same powers as a pledgee under a land charge.

<sup>2</sup> The representative must safeguard the rights of the creditors, the borrower and the owner of the charged property diligently and impartially.

**Art. 1162**

III. Lapse of authority

<sup>1</sup> The creditors' meeting may revoke or modify the authority conferred on a representative at any time.

<sup>2</sup> The authority of a representative appointed under the bond issue conditions may be revoked or modified at any time by resolution of the community of creditors with the consent of the borrower.

<sup>3</sup> On application by a bond creditor or the borrower, the court may declare such authority extinguished for good cause.

<sup>4</sup> Where the representative's authority lapses for whatever reason, at the request of a bond creditor or the borrower, the court orders the measures necessary to protect the bond creditors and the borrower.

**Art. 1163**

IV. Costs

<sup>1</sup> The costs of all representative arrangements envisaged in the bond issue conditions are borne by the borrower.

<sup>2</sup> The costs of representation appointed by the community of creditors are covered by payments made by the borrower and deducted from all bond creditors in proportion to the nominal value of the bonds they hold.

**Art. 1164**

C. Creditors' meeting  
I. In general

<sup>1</sup> The community of creditors is authorised within the bounds of the law to take all measures required to safeguard the collective interests of the bond creditors, in particular as regards any financial difficulties encountered by the borrower.

<sup>2</sup> The resolutions of the community of creditors are made by the creditors' meeting and are valid providing they satisfy the requirements laid down by the law in general or for specific measures.

<sup>3</sup> The individual bond creditors are not entitled to assert their rights independently to the extent that valid resolutions on the matters in question have been made by the creditors' meeting.

<sup>4</sup> The costs of convening and holding the creditors' meeting are borne by the borrower.



**Art. 1165**II. Convocation  
1. In general

1 The creditors' meeting is convened by the borrower.

2 The borrower is obliged to convene it within 20 days if so requested by bond creditors together holding at least one-twentieth of the bond capital in circulation or by the bond representative in writing with an indication of the purpose of and reasons for the meeting.

3 In the event that the borrower fails to comply with such request, the court may authorise the applicant to convene a creditors' meeting of his own accord. The court at the current or last seat of the debtor in Switzerland has mandatory jurisdiction.<sup>620</sup>

4 If the debtor has or had only a branch office in Switzerland, the court at the location of this branch office has mandatory jurisdiction.<sup>621</sup>

**Art. 1166**

## 2. Moratorium

1 From the date on which the invitation to the creditors' meeting is duly published until the final outcome of the composition proceedings, all due claims of the bond creditors are subject to a stay of enforcement.

2 Such stay is not a suspension of payments within the meaning of the Debt Collection and Bankruptcy Act of 11 April 1889<sup>622</sup>; the creditors may not apply for the commencement of insolvency proceedings without prior debt enforcement.

3 For the duration of the stay, such limitation and forfeiture periods as can be interrupted by debt enforcement are suspended for the due claims of the bond creditors.

4 Where the borrower abuses the right to obtain a stay of enforcement, at the request of a bond creditor it may be lifted by the higher cantonal composition authority.

**Art. 1167**III. Holding the meeting  
1. Voting right

1 Each owner of a bond or his representative, or in the case of bonds under a usufruct either the usufructuary or his representative, has the right to vote. However, the usufructuary is liable in damages to the owner for any failure to take due account of the latter's interests when exercising the voting rights.

2 Bonds owned by or held in usufruct by the borrower confer no voting rights. However, where bonds belonging to the borrower have been

<sup>620</sup> Amended by Annex 1 No II 5 of the Civil Procedure Code of 19 Dec 2008, in force since 1 Jan 2011 (AS 2010 1739; BBl 2006 7221).

<sup>621</sup> Amended by Annex 1 No II 5 of the Civil Procedure Code of 19 Dec 2008, in force since 1 Jan 2011 (AS 2010 1739; BBl 2006 7221).

<sup>622</sup> SR 281.1

given in pledge, the pledgee is entitled to exercise the associated voting rights.

<sup>3</sup> A charge or special lien held by the borrower on bonds does not preclude the voting rights of the owners of such bonds.

### Art. 1168

2. Representation of individual bond creditors

<sup>1</sup> Representation of bond creditors requires a written power of attorney, unless such representation has its basis in law.

<sup>2</sup> The borrower is excluded from representing bond creditors with voting rights.

### Art. 1169

IV. Procedure

The Federal Council enacts provisions governing convocation of the creditors' meeting, communication of the agenda, proof of entitlement to participate in the creditors' meeting, moderation of the general meeting and the recording and communication of its resolutions.

### Art. 1170

D. Resolutions of the community of creditors

I. Encroachment on creditors' rights

1. Admissibility and required majority  
a. In the case of only one community of creditors

<sup>1</sup> A majority of at least two-thirds of the bond capital in circulation is required to pass a valid resolution in connection with the following measures:

1. moratorium on interest for up to five years, with the option of extending the moratorium twice for up to five years each time;
2. waiver of up to five years' worth of interest within a seven-year period;
3. decrease of the interest rate by up to one-half of the rate envisaged in the bond issue conditions or conversion of a fixed interest rate into a rate dependent on the business results, both measures to last for up to ten years, with the option of an extension for up to five years;
4. extension of the redemption time limit by up to ten years by means of a reduction in the annual payment or an increase in the number of the redemption shares or temporary suspension of such payments, with the option of an extension for up to five years;
5. suspension of a bond issue now due or maturing within five years or of portions thereof for up to ten years, with the option of an extension for up to five years;
6. authorisation of an early redemption of the bond capital;

7. granting of a priority lien for new capital raised for the issuing company and changes to the collateral provided for a bond issue or full or partial waiver of such collateral;
  8. consent to an amendment of the provisions governing restrictions on issues of bonds in relation to the share capital;
  9. consent to a full or partial conversion of bonds into shares.
- <sup>2</sup> These measures may be combined.

### Art. 1171

b. In the case of several communities of creditors

<sup>1</sup> Where there is more than one community of creditors, the borrower may propose one or more of the measures described in the previous Article to the different communities of creditors simultaneously, subject to the proviso that, where one such measure is proposed, it will be valid only if accepted by all the communities of creditors and that in addition, where two or more such measures are proposed, the validity of each measure is conditional on acceptance of all the others.

<sup>2</sup> Proposals are deemed accepted where they obtain the consent of persons representing at least two-thirds of the bond capital in circulation of all such communities of creditors combined and at the same time are accepted by a majority of the communities of creditors and, within each community of creditors, by at least a simple majority of the bond capital represented.

### Art. 1172

c. Determining the majority

<sup>1</sup> When determining the total bond capital in circulation, bonds that do not confer voting rights are disregarded.

<sup>2</sup> Where a motion put to the creditors' meeting fails to attain the requisite number of votes, the borrower may register votes making up the shortfall by written and authenticated declarations made within two months of the date of the meeting to the chairman of the meeting and thereby bring about a valid resolution.

### Art. 1173

2. Restrictions  
a. In general

<sup>1</sup> No bond creditor may be required by resolution of the community of creditors to tolerate an encroachment on the creditors' rights other than those envisaged in Article 1170 or to make payments that were neither envisaged in the bond issue conditions nor agreed with him when the bonds were issued.

<sup>2</sup> The community of creditors may not extend the creditors' rights without the consent of the borrower.

**Art. 1174**

b. Equal treatment

<sup>1</sup> The persons making up a community of creditors must all be equally affected by any resolution to adopt compulsory measures, unless every disadvantaged creditor expressly agrees to such measures.

<sup>2</sup> The ranking of charge creditors must not be changed without their consent. Article 1170 letter 7 is reserved.

<sup>3</sup> Undertakings and dispositions whereby individual creditors are favoured over others belonging to the community of creditors are void.

**Art. 1175**<sup>623</sup>

c. Statement and balance sheet

An application to take the measures described in Article 1170 may be made by the borrower and considered by the creditors' meeting only on the basis of status report drawn up as at the date of the creditors' meeting or a balance sheet drawn up as at a date no more than six months prior to the meeting in accordance with standard practice and, where applicable, certified by the auditor as true and fair.

**Art. 1176**3. Official approval  
a. In general

<sup>1</sup> Resolutions involving an encroachment on creditors' rights are effective and binding on the bond creditors who did not vote in favour of them only if they have been approved by the higher cantonal composition authority.

<sup>2</sup> The borrower must submit them within one month of their adoption to said authority for approval.

<sup>3</sup> The time and date of the hearing is published together with a notice to the bond creditors informing them that they may raise objections in writing or in person at the hearing.

<sup>4</sup> The costs of the approval procedure are borne by the borrower.

**Art. 1177**

b. Requirements

Official approval may be refused only where:

1. the provisions governing the convocation of the creditors' meeting and its adoption of resolutions were infringed;
2. it transpires that a resolution intended to avert financial hardship from the borrower was not necessary;
3. the collective interests of the bond creditors are not sufficiently protected;

<sup>623</sup> Amended by No I 3 of the FA of 16 Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).

4. the resolution was brought about by dishonest means.

**Art. 1178**

- c. Appeal
- <sup>1</sup> Once approval has been given, it may be challenged as illegal or inappropriate within 30 days before the Federal Supreme Court by any bond creditor who did not vote for the resolution, in which case the legal procedure envisaged for matters concerning debt collection and bankruptcy is applicable.
  - <sup>2</sup> Similarly, a decision to refuse approval may be challenged by bond creditors who voted in favour of the resolution or by the borrower.

**Art. 1179**

- d. Revocation
- <sup>1</sup> If it subsequently transpires that the resolution of the creditors' meeting was brought about by dishonest means, at the request of a bond creditor the higher cantonal composition authority may revoke approval in part or in full.
  - <sup>2</sup> An application for revocation must be filed within six months of the date on which the bond creditors learned of the grounds for challenge.
  - <sup>3</sup> Revocation may be challenged as unlawful or unreasonable within 30 days before the Federal Supreme Court by the borrower and by any bond creditor, in which case the legal procedure envisaged for matters concerning debt collection and bankruptcy is applicable. Similarly, a refusal to revoke approval may be challenged by any bond creditor who requested such revocation.

**Art. 1180**

- II. Other resolutions
1. Authority of the bond representative
- <sup>1</sup> The consent of persons representing more than one-half of the bond capital in circulation is required to revoke or modify the authority conferred on a bond representative.
  - <sup>2</sup> The same majority is required for a resolution to grant a bond representative authority to safeguard the rights of all the bond creditors in insolvency proceedings.

**Art. 1181**

2. On other matters
- <sup>1</sup> Resolutions which neither encroach on the creditors' rights nor impose further material contributions on the creditors require merely an absolute majority of the votes represented, unless the law stipulates otherwise or the bond issue conditions impose stricter requirements.
  - <sup>2</sup> The majority is determined in all cases according to the nominal value of the bond capital conferring voting rights that is represented at the creditors' meeting.

**Art. 1182**

## 3. Challenge

Any resolution within the meaning of Articles 1180 and 1181 which contravenes the law or contractual provisions may be challenged in court by a member of the community of bond creditors who did not vote for it within 30 days of the date on which he learned of it.

**Art. 1183**E. Special cases  
I. Insolvency of  
the borrower

<sup>1</sup> Where a borrower becomes insolvent, the insolvency administrators must convene a meeting of the bond creditors without delay, at which an existing representative or a representative appointed by the meeting is granted authority to safeguard the rights of all the bond creditors in insolvency proceedings.

<sup>2</sup> Where no resolution is made to grant such authority, each bond creditor represents his rights independently.

**Art. 1184**II. Composition  
agreement

<sup>1</sup> In composition proceedings, subject to the provisions governing bonds secured by a charge, no special resolution is made by the bond creditors on their position towards the composition agreement, and their consent is governed exclusively by the provisions of the Debt Collection and Bankruptcy Act of 11 April 1889<sup>624</sup>.

<sup>2</sup> The provisions governing the community of creditors apply to creditors holding bonds secured by a charge, to the extent that any restriction of their creditors' rights is to be imposed above and beyond the effects of the composition proceedings.

**Art. 1185**III. Bonds issued  
by railway or  
inland water-  
ways transport  
companies

<sup>1</sup> The provisions of this Chapter are applicable to bond creditors of railway or inland waterways transport companies, subject to the following special provisions.

<sup>2</sup> A request for convocation of a creditors' meeting must be made to the Federal Supreme Court.

<sup>3</sup> The Federal Supreme Court is responsible for convening the creditors' meeting and the recording, approval and implementation of its resolutions.

<sup>4</sup> On receipt of a request for convocation of a creditors' meeting, the Federal Supreme Court may order a stay of enforcement with the effects envisaged in Article 1166.

**Art. 1186**F. Mandatory  
law

<sup>1</sup> The rights conferred by law on the community of creditors and the bond representative may be neither excluded nor restricted by the bond issue conditions or other special agreements between the creditors and the borrower.

<sup>2</sup> This does not apply to provisions made in the bond issue conditions whereby more restrictive requirements are placed on the adoption of resolutions by the creditors' meeting.

**Transitional Provisions to the Federal Act of 30 March 1911**

I. The Final Title of the Civil Code<sup>625</sup> is amended as follows:

...<sup>626</sup>

II. This Act enters into force on 1 January 1912.

The Federal Council is charged with making arrangements to publicise this Code on the basis of the provisions of the Federal Act of 17 June 1874<sup>627</sup> on Referendums on Federal Acts and Federal Council Decrees.

**Final Provisions to the Amendment of 23 March 1962<sup>628</sup>****Art. 1**A. Preferential  
payments on  
bankruptcy

...<sup>629</sup>

**Art. 2**B. Unfair  
competition

...<sup>630</sup>

**Art. 3**C. Transitional  
law

<sup>1</sup> Articles 226*f*, 226*g*, 226*h*, 226*i* and 226*k*<sup>631</sup> also apply to hire purchase agreements entered into prior to the commencement of this Act.

<sup>2</sup> Only Article 226*k* applies to advance payment agreements entered into prior to the commencement of this Act. These agreements must

<sup>625</sup> SR 210. The amendment below is inserted in the said enactment.

<sup>626</sup> The amendments may be consulted under AS 27 317.

<sup>627</sup> [BS I 173; AS 1962 789 Art. 11 para. 3, 1978 712 Art. 89 No b]

<sup>628</sup> Inserted by No II of the FA of 23. March 1962, in force since 1 Jan 1963 (AS 1962 1047 1056; BBl 1960 I 523).

<sup>629</sup> The amendments may be consulted under AS 1962 1047.

<sup>630</sup> The amendments may be consulted under AS 1962 1047.

<sup>631</sup> These Articles have now been repealed.

however be adapted to the provisions of the Article 227*b* within one year, failing which they lapse and the purchaser must be paid his entire credit balance with all the interest and benefits credited to him.

#### Art. 4

D. Entry into force

The Federal Council determines the date on which this Act enters into force.

### Transitional Provisions to the Amendment of 16 December 2005<sup>632</sup>

#### Art. 1

A. General rule

<sup>1</sup> The final title of the Civil Code applies to this Code unless the following provisions provide otherwise.

<sup>2</sup> The provisions of the new Code apply to existing companies from its commencement.

#### Art. 2

B. Deadline for amendments

<sup>1</sup> Limited liability companies entered in the commercial register on the commencement of this Code but which do not fulfil the new requirements must amend their articles of association and regulations to the new provisions within two years.

<sup>2</sup> Provisions of the articles of association and regulations that are inconsistent with the new law remain in force until their amendment but for two years at the most.

<sup>3</sup> For limited liability companies that are entered in the commercial register when this Code comes into force, Articles 808*a* and 809 paragraph 4 second sentence only apply after expiry of the period allowed to amend the articles of association.

<sup>4</sup> Companies limited by shares and cooperatives that are entered in the commercial register when this Code comes into force whose name does not comply with the new statutory requirements must adapt their name to the new provisions within two years. On expiry of this period, the commercial registry amends the name *ex officio*.

<sup>632</sup> Inserted by No III of the FA of 16. Dec 2005 (Law on Limited Liability Companies and Amendments to the Law on Companies limited by Shares, Cooperatives, the Commercial Register and Business Names), in force since 1 Jan 2008 (AS 2007 4791; BBl 2002 3148, 2004 3969).



- Art. 3**
- C. Payment of contributions
- 1 Where in limited liability companies that are entered in the commercial register when this Act comes into force, allocations have not been made corresponding to the issue price of all capital contributions, these allocations must be made within two years.
- 2 Until the full payment of the allocation to the level of the capital contributions, the company members are liable in accordance with Article 802 of the Code of Obligations in its version of 18 December 1936<sup>633</sup>.
- Art. 4**
- D. Participation certificates and dividend rights certificates
- 1 Shares in limited liability companies that indicate a nominal value and which are recorded under liabilities on the balance sheet, but will confer no voting rights (participation certificates), are deemed after two years to be capital contributions with the same property rights if they are not cancelled during this period by means of a reduction in capital. If the shares are cancelled, the former participants must be paid compensation corresponding to the true value of the certificates.
- 2 The required resolutions of the members' general meeting may be passed with an absolute majority of the votes represented, even if the articles of association provide otherwise.
- 3 Shares in limited liability companies that are not recorded under liabilities on the balance sheet are governed by the provisions on dividend rights certificates once this Act comes into force, even if they are designated participation certificates. They may not indicate a nominal value and must be designated dividend rights certificates. The designation of the shares and the articles of association must be amended within two years.
- Art. 5**
- E. Own capital contributions
- Where limited liability companies acquired their own capital contributions before this Act comes into force, they must, provided they exceed 10 per cent of the nominal capital, sell the same or cancel the same by means of a reduction in capital, within two years.
- Art. 6**
- F. duty to pay in further capital
- 1 Obligations under the articles of association to pay additional capital contributions that were established before this Act comes into force and that exceed twice the nominal value of the capital contributions, remain legally valid and may only be reduced by following the procedure under Article 795c.

<sup>2</sup> Otherwise, the new provisions apply after this Act comes into force, in particular in relation to the call for additional capital contributions.

### **Art. 7**

G. Auditor The provisions of this Act on the auditor apply from the first financial year that begins when this Act comes into force or thereafter.

### **Art. 8**

H. Voting rights <sup>1</sup> Limited liability companies that have conferred voting rights before this Act comes into force that are not dependent on the nominal value of the capital contributions are not required to amend the corresponding provisions to the requirements von Article 806.

<sup>2</sup> On the issue of new capital contributions, Article 806 paragraph 2 second sentence must be observed in every case.

### **Art. 9**

J. Amendment of majority requirements in the articles of association If a limited liability company, simply by reproducing the provisions of the old law, has adopted provisions in the articles of association that require qualified majorities to pass resolutions at the members' general meeting, the members' general meeting may within two years by an absolute majority of the votes represented resolve to amend these provisions in accordance with the new law.

### **Art. 10**

K. Cancellation of shares and capital contributions in the event of restructuring If, before this Act comes into force, the share capital or the nominal capital is reduced to zero for the purposes of restructuring and thereafter increased again, the membership rights of the former shareholders or company members cease to exist when this Act comes into force.

### **Art. 11**

L. Exclusivity of registered business names The exclusivity of business names that were entered in the commercial register before this Act comes into force is assessed in accordance with Article 951 of the Code of Obligations in its version of 18 December 1936<sup>634</sup>.

### **Transitional Provision to the Amendment of 17 June 2011<sup>635</sup>**

The provision in this amendment applies from the first financial year beginning on or after the date on which this amendment comes into force.

<sup>634</sup> AS 53 185

<sup>635</sup> AS 2011 5863; BBl 2008 1589

## **Transitional Provision to the Amendment of 23 December 2011<sup>636</sup>**

### **Art. 1**

- A. General rule
- <sup>1</sup> The provisions of the Final Title of the Civil Code<sup>637</sup> apply to this Code unless the following provisions provide otherwise.
  - <sup>2</sup> The provisions of the Amendment of 23 December 2011 apply to existing undertakings from the date on which it comes into force.

### **Art. 2**

B. Commercial  
accounting and  
financial  
reporting

- <sup>1</sup> The regulations in Title Thirty Two first apply in the financial year that begins two years after this Amendment comes into force.
- <sup>2</sup> The basis for the application of the provisions on financial reporting by larger undertakings is formed by the balance sheet total, sales revenue and number of full-time positions on annual average in the two years before this Amendment comes into force
- <sup>3</sup> The provisions on consolidated accounts first apply in the financial year beginning three years after this Amendment comes into force. The two previous financial years form the basis for the exemption from the duty to prepare consolidated accounts.
- <sup>4</sup> When applying the regulations on financial reporting for the first time, it is not required to specify the figures from previous years. When applying the regulations for the second time, only the figures from the previous year need be specified. If figures from previous financial years are specified, consistency of presentation and structure are not required. Reference must be made to this in the notes to the accounts.

## **Transitional Provisions to the Amendment of 12 December 2014<sup>638</sup>**

### **Art. 1**

- A. General rule
- <sup>1</sup> Articles 1–4 of the Final Title of the Civil Code<sup>639</sup> apply to this Code unless the following provisions provide otherwise.
  - <sup>2</sup> The provisions of the Amendment of 12 December 2014 apply to existing companies on coming into force.

<sup>636</sup> AS 2012 6679; BBl 2008 1589

<sup>637</sup> SR 210

<sup>638</sup> AS 2015 1389; BBl 2014 605

<sup>639</sup> SR 210

B. Adapting articles of association and regulations

### Art. 2

<sup>1</sup> Companies entered in the commercial register when the Amendment of 12 December 2014 comes into force that do not comply with the new regulations must adapt their articles of association and regulations to the new provisions within two years.

<sup>2</sup> Provisions of articles of association and regulations that are incompatible with the new law remain in force until they are adapted or for a maximum of two years.

C. Obligations to give notice

### Art. 3

<sup>1</sup> Persons holding bearer shares when the Amendment of 12 December 2014 comes into force must comply with the obligations to give notice under Articles 697*i* and 697*j* that apply on acquiring shares

<sup>2</sup> The deadline for the lapse of property rights (Art. 697*m* para. 3) in this case is six months after the Amendment of 12 December 2014 comes into force.

## Transitional Provisions to the Amendment of 25 September 2015<sup>640</sup>

A. General rule

### Art. 1

<sup>1</sup> Articles 1–4 of the Final Title of the Civil Code<sup>641</sup> apply to this Code unless the following provisions provide otherwise.

<sup>2</sup> The provisions of the Amendment of 25. September 2015 apply to existing legal entities on coming into force.

B. Amendment of registered business names

### Art. 2

General and limited partnerships and partnerships limited by shares that are entered in the commercial register when the Amendment of 25 September 2015 comes into force and whose business name does not comply with the requirements of the Amendment of 25 September 2015 may continue to use their business name without change, provided Articles 947 and 948 of the previous law does not require a change.

C. Exclusivity of the registered business name

### Art. 3

If the business name of a general or limited partnership or partnership limited by shares was entered in the commercial register before the Amendment of 25 September 2015 comes into force, its exclusivity is

<sup>640</sup> AS 2016 1507; BBI 2014 9305

<sup>641</sup> SR 210

assessed in accordance with Article 946 of the current law and Article 951 of the previous law.

## **Transitional provisions to the Amendment of 21 June 2019<sup>642</sup>**

### **Art. 1**

A. General provisions

<sup>1</sup> Articles 1–4 of the Final Title of the Civil Code<sup>643</sup> apply to this Code unless the following provisions provide otherwise.

<sup>2</sup> The provisions of the Amendment of 21 June 2019 apply on its commencement to existing companies.

### **Art. 2**

B. Reporting exceptions to the commercial register office

Companies limited by shares and partnerships limited by shares with bearer shares that have equity securities listed on a stock exchange or whose bearer shares are organised as intermediated securities must request registration in accordance with Article 622 paragraph 2<sup>bis</sup> by the commercial register office within 18 months of Article 622 paragraph 1<sup>bis</sup> coming into force.

### **Art. 3**

C. Companies without listed equity securities with bearer shares not organised as intermediated securities

1. Scope of application

Articles 4–8 apply to companies that have no equity securities listed on a stock exchange and whose bearer shares are not organised as intermediated securities, and to companies that have not requested registration in accordance with Article 622 paragraph 2<sup>bis</sup>.

### **Art. 4**

2. Conversion of bearer shares into registered shares

<sup>1</sup> If, 18 months after Article 622 paragraph 1<sup>bis</sup> comes into force, a company limited by shares or partnership limited by shares still has bearer shares that are not registered in accordance with Article 622 paragraph 2<sup>bis</sup>, these shares shall by law be converted into registered shares. The conversion takes effect in relation to any person, irrespective of any provisions of the articles of association or commercial register entries that provide otherwise, and irrespective of whether share certificates have been issued or not.

<sup>2</sup> The Commercial Register Office shall record the amendments resulting from paragraph 1 ex officio. It shall also enter a note to the effect

<sup>642</sup> AS 2019 3161; BBl 2019 279

<sup>643</sup> SR 210

that the documents contain information that is inconsistent with the entry.

<sup>3</sup> The converted shares retain their nominal value, are paid up to the same extent and carry the same voting and property rights. Their transferability is not restricted.

### Art. 5

3. Amendment to the articles of association and entry in the commercial register

<sup>1</sup> Companies limited by shares and partnerships limited by shares, whose shares have been converted must amend their articles of association when the next opportunity arises to do so.

<sup>2</sup> The commercial register office shall reject any application to register any other amendment to the articles of association in the commercial register for as long as this amendment has not been made.

<sup>3</sup> A company that has listed equity securities or that has organised its converted shares as intermediated securities need not amend its articles of association provided:

- a. the general meeting decides to convert the converted shares into bearer shares without changing their number, the nominal value or the share class; and
- b. the company requests registration in accordance with Article 622 paragraph 2<sup>bis</sup>.

<sup>4</sup> If the company has amended the articles of association in accordance with paragraph 1 to take account of the conversion or if an amendment is not required in accordance with paragraph 3, the commercial register office shall delete the note in accordance with Article 4 paragraph 2.

### Art. 6

4. Updating of the share register and suspension of rights

<sup>1</sup> Following the conversion of bearer shares into registered shares, the company shall enter details of the shareholders that have fulfilled the obligation to give notice in Article 697*i* of the previous law in the share register.

<sup>2</sup> The membership rights of shareholders who have not complied with the obligation to give notice are suspended and their property rights lapse. The board of directors shall ensure that no shareholders exercise their rights while in breach of this provision.

<sup>3</sup> An entry shall be made in the share register to the effect that these shareholders have failed to comply with their obligation to give notice and that the rights conferred by the shares may not be exercised.

### Art. 7

5. Retrospective notice

<sup>1</sup> Shareholders who have failed to comply with their obligation to give notice in accordance with Article 697*i* of the previous law and whose

bearer shares have been converted into registered shares in accordance with Article 4 may with the prior consent of the company apply to the court within five years of Article 622 paragraph 1<sup>bis</sup> coming into force to be entered in the share register. The court shall grant the application if the shareholder proves his or her shareholder status.

<sup>2</sup> The court decides under the summary procedure. The shareholder bears the court costs.

<sup>3</sup> If the court grants the application, the company makes the entry. The shareholders may claim the property rights that arise from this date.

### Art. 8

6. Permanent loss of shareholder status

<sup>1</sup> Shares belonging to shareholders who have not requested the court to approve their entry in the company's share register in accordance with Article 7 within five years of Article 622 paragraph 1<sup>bis</sup> coming into force become null and void by law. The shareholders lose the rights conferred by the shares. The shares that are null and void are replaced by the company's own shares.

<sup>2</sup> Shareholders whose shares have become null and void through no fault of their own and who can prove that they were shareholders on the date that the shares became null and void, may within ten years of this date claim compensation from the company. The compensation corresponds to the true value of the shares at the time of their conversion in accordance with Article 4. If the true value of the shares on pursuing the claim is lower than that at the time of their conversion, the company need only pay the lower value. Compensation is excluded if the company does not have the required freely disposable shareholders' equity.

## Final Provisions on Title Eight and Title Eight<sup>bis</sup> <sup>644</sup>

### Art. 1

The Federal Decree of 30 June 1972<sup>645</sup> on Measures against Abuses in Tenancy Law is repealed.

### Art. 2–4

...<sup>646</sup>

<sup>644</sup> Inserted by No II of the FA of 15 Dec 1989, in force since 1 July 1990 (AS 1990 802; BBl 1985 I 1389).

<sup>645</sup> [AS 1972 1502, 1977 1269, 1982 1234, 1987 1189]

<sup>646</sup> The amendments may be consulted under AS 1990 802.

**Art. 5**

<sup>1</sup> The provisions governing protection against termination in the renting and leasing of residential and commercial accommodation apply to all residential and commercial leases that are terminated following the commencement of this Act.

<sup>2</sup> However, if notice is given of the termination of a residential or commercial lease prior to the commencement of this Act, but with effect from a date thereafter, the time limits for challenging the termination and the request for an extension (Art. 273) begin when this Act comes into force.

**Art. 6**

<sup>1</sup> This Act is subject to an optional referendum.

<sup>2</sup> The Federal Council determines the commencement date.

**Final and Transitional Provisions on Title X<sup>647</sup>****Art. 1**

Amendment of  
the CO ...<sup>648</sup>

**Art. 2**

Amendment of  
the CC ...<sup>649</sup>

**Art. 3**

Amendment of  
the Insurance  
Contracts Act ...<sup>650</sup>

**Art. 4**

Amendment of  
the Agriculture  
Act ...<sup>651</sup>

<sup>647</sup> Inserted by No II of the FA of 25. June 1971, in force since 1 Jan 1972 (AS 1971 1465; BBl 1967 II 241).

<sup>648</sup> The amendments may be consulted under AS 1971 1465.

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**Art. 5**

Amendment of  
the Employment  
Act ...<sup>652</sup>

**Art. 6**

Repeal of federal  
law provisions The following provisions are repealed on the commencement of this Act:

1. Article 159 and 463 of the Code of Obligations,
2. Article 130 of the Federal Act of 13 June 1911<sup>653</sup> on Health and Accident Insurance,
3. Article 20 to 26, 28, 29 and 69 paragraphs 2 and 5 of the Federal Act of 18 June 1914<sup>654</sup> on Factory Employment,
4. Article 4, 8 paragraphs 1, 2 and 5, 9 and 19 of the Federal Act of 12 December 1940<sup>655</sup> on Homeworking,
5. the Federal Act of 13 June 1941<sup>656</sup> on Employment Terms for Commercial Travellers,
6. the Federal Act of 1 April 1949<sup>657</sup> on Restrictions on the Termination of Employment Contracts while on Military Service,
7. Articles 96 and 97 of the Agriculture Act of 3 October 1951<sup>658</sup>,
8. Article 32 of the Federal Act of 25 September 1952<sup>659</sup> on the System of Compensation for Loss of Earnings for Persons on Military Service or Civil Protection Duty,
9. Article 19 of the Federal Act of 28. September 1956<sup>660</sup> on the Declaration of the General Application of Collective Employment Agreements,
10. Article 49 of the Civil Defence Act<sup>661</sup>,

<sup>652</sup> The amendments may be consulted under AS 1971 1465.

<sup>653</sup> [BS 8 281; AS 1959 858, 1964 965 No I-III, 1968 64, 1977 2249 No I 611, 1978 1836 Annex No 4, 1982 196 1676 Annex No 1 2184 Art. 114, 1990 1091, 1991 362 No II 412, 1992 288 Annex No 37 2350, 1995 511. AS 1995 1328 Annex No 1]

<sup>654</sup> SR 821.41

<sup>655</sup> [BS 8 229; AS 1951 1231 Art. 14 para. 2, 1966 57 Art. 68. AS 1983 108 Art. 21 No 3]

<sup>656</sup> [BS 2 776; AS 1966 57 Art. 69]

<sup>657</sup> [AS 1949 II 1293]

<sup>658</sup> [AS 1953 1073, 1954 1364 Art. 1, 1958 659, 1959 588, 1960 1279, 1962 203 1144 Art. 14 1412, 1967 722, 1968 92, 1974 763, 1975 1088, 1977 2249 No 1 921 942 931, 1979 2058, 1982 1676 Annex No 6, 1988 640, 1989 504 Art. 33 No c, 1991 362 No II 51 857 Annex No 25 2611, 1992 1860 Art. 75 No 5 1986 Art. 36 para. 1, 1993 1410 Art. 92 No 4 1571 2080 Annex No 11, 1994 28, 1995 1469 Art. 59 No 3 1837 3517 No I 2, 1996 2588 Annex No 2 2783, 1997 1187 1190, 1998 1822. AS 1998 3033 Annex No c]

<sup>659</sup> SR 834.1. Now: Federal Act on Compensation for Loss of Earnings for Persons on Military Service or Maternity Leave (Loss of Earnings Compensation Act, LECA).

<sup>660</sup> SR 221.215.311

11. Art. 20 paragraph 2 and 59 of the Federal Act of 20 September 1963<sup>662</sup> on Vocational Education and Training,
12. Art. 64<sup>663</sup> and 72 paragraph 2 letter *a* of the Employment Act of 13 March 1964<sup>664</sup>.

### Art. 7

Amendment of legal relations governed by the old law

Contracts of employment in existence when this Act comes into force (individual contracts of employment, standard employment contracts and collective employment contracts) must be amended in accordance with the provisions hereof within one year; on expiry of this time limit, the provisions hereof apply to all contracts of employment.

<sup>2</sup> Occupational benefits schemes in existence when this Act comes into force<sup>665</sup> must amend their articles of association or regulations by 1 January 1977 at the latest taking account of the formal requirements of Articles 331 *a*, 331 *b* and 331 *c* applicable to the amendment; from 1 January 1977, these provisions apply to all occupational benefits schemes.<sup>666</sup>

### Art. 8

Commencement of the Act

The Federal Council shall determine the commencement date of this Act.

## Final Provisions on the Fourth Section of Title XIII.<sup>667</sup>

### Art. 1

A. Transitional law

<sup>1</sup> Articles 418*d* paragraph 1, 418*f* paragraph 1, 418*k* paragraph 2, 418*o*, 418*p*, 418*r* and 418*s* apply immediately to agency contracts already in existence when the new law comes into force.

<sup>2</sup> In other respects, agency contracts already in existence when the new law comes into force must be amended in accordance with the new

<sup>661</sup> [AS 1962 1089, 1964 487 Art. 22 para. 2 No b, 1968 1025 Art. 35, 1969 310 No III, 1971 751, 1978 50 570, 1985 1649, 1990 1882 Annex No 7, 1992 288 Annex No 22, 1993 2043 Annex No 3, 1994 2626 Art. 71]

<sup>662</sup> [AS 1965 321 428, 1968 86, 1972 1681, 1975 1078 No III, 1977 2249 No I 331. AS 1979 1687 Art. 75]

<sup>663</sup> This Art. has now been repealed.

<sup>664</sup> SR 822.11

<sup>665</sup> 1 Jan 1972

<sup>666</sup> Amended by No I of the FA of 25. June 1976, in force since 1 Jan 1977 (AS 1976 1972 1974; BBl 1976 I 1269).

<sup>667</sup> Inserted by No II of the FA of 4 Feb. 1949, in force since 1 Jan 1950 (AS 1949 I 802; BBl 1947 III 661).

provisions within two years. After this time limit expires, the new law also applies to agency contracts entered into previously.

<sup>3</sup> In the absence of an agreement to the contrary, on expiry of two years, the provisions of this Section also apply to contracts already in existence when the new law comes into force relating to agents who act as such as a subsidiary occupation

## Art. 2

B. Preferential payments on bankruptcy

...<sup>668</sup>

## Art. 3

C. Entry into force

The Federal Council determines the commencement date of this Act.

## Transitional provisions on Title XX<sup>669</sup>

<sup>1</sup> The provisions of the new law apply to all contracts of surety entered into after this Act comes into force.

<sup>2</sup> Contracts of surety entered into after this Act comes into force are subject to the provisions of the new law only with regard to matters that arise subsequently and with following restrictions:

1. The new Articles 492 paragraph 3, 496 paragraph 2, 497 paragraphs 3 and 4, 499, 500, 501 paragraph 4, 507 paragraphs 4 and 6, 511 paragraph 1 do not apply.
2. The provisions of the new Articles 493 on form and 494 on the requirement of the spouse's consent apply to contracts of surety under the old law only insofar as they relate to subsequent amendments of the contracts of surety.
3. Article 496 paragraph 1 applies with the requirement that recourse may be had to the surety not only before the principal debtor and before realisation of the property given in pledge, but also before the realisation of other charges, provided the principal debtor is in arrears and has failed to respond to reminders or his inability to pay is obvious.
4. The creditor is granted a period of six months from falling in arrears or at least three months from the commencement of this Act to give notice of the arrears in accordance with Article 505 paragraph 1.

<sup>668</sup> The amendments may be consulted under AS 1949 I 802.

<sup>669</sup> Inserted by No II of the FA of 10 Dec 1941, in force since 1 July 1942 (AS 58 279 644; BBl 1939 II 841).

5. Article 505 paragraph 2 applies only to bankruptcy proceedings commenced at least three months after this Act comes into force, and to debt restructuring moratoriums approved at least three months after this Act comes into force.
6. The time limit mentioned in Article 509 paragraph 3 begins to run for contracts of surety under the old law when this Act comes into force.

<sup>3</sup> Articles 77–80 of the Customs Act of 18 March 2005<sup>670</sup> are reserved.<sup>671</sup>

<sup>4</sup> The Federal Council determines the commencement date of this Act.

## **Final and Transitional Provisions on Titles XXIV–XXXIII**<sup>672</sup>

### **Art. 1**

A. Scope of application of the Final Title

The provisions of the Final Title of the Civil Code<sup>673</sup> also apply to this Act.

### **Art. 2**

B. Adaptation of existing companies to the new law

I. In general

<sup>1</sup> Companies limited by shares, partnerships limited by shares and cooperatives that are entered in the commercial register when this Act comes into force, but which do not meet the statutory requirements, must amend their articles of association in accordance with the new provisions within five years.

<sup>2</sup> During this period, they are subject to the previous law where their articles of association are contrary to the new provisions.

<sup>3</sup> If the companies fail to comply with this provision, on expiry of the deadline, they must be declared dissolved ex officio by the commercial registrar.

<sup>4</sup> The Federal Council may extend the application of the old law in the case of insurance and credit cooperatives on a case-by-case basis. Any application in relation thereto must be filed within three years of this Act coming into force.

<sup>670</sup> SR 631.0

<sup>671</sup> Amended by Annex No 2 of the Customs Act of 18 March 2005, in force since 1 May 2007 (AS 2007 1411; BBl 2004 567).

<sup>672</sup> Inserted by the Federal Act of 18 Dec 1936, in force since 1 July 1937 (AS 53 185; BBl 1928 I 205, 1932 I 217).

<sup>673</sup> SR 210

- Art. 3**
- II. Welfare schemes
- Where companies limited by shares, partnerships limited by shares and cooperatives have prior to the entry into force of this Act clearly provided funds to establish and support welfare schemes for employees and for members, they must adapt these schemes within five years to the provisions of Articles 673<sup>674</sup> and 862<sup>675</sup>.
- Art. 4**<sup>676</sup>
- Art. 5**
- C. Balance sheet provisions  
I. Exception for extraordinary circumstances
- <sup>1</sup> The Federal Council is entitled where extraordinary economic circumstances so require to enact provisions that permit deviations from the requirements relating to balance sheets laid down in this Act. Any resolution of the Federal Council to this effect must be published.
- <sup>2</sup> If a Federal Council decree of this nature applies to the preparation of a balance sheet, this must be stated on the balance sheet.
- Art. 6**<sup>677</sup>
- II. ...
- Art. 7**
- D. Conditions for liability of members
- <sup>1</sup> The rights of creditors existing when this Act comes into force are not adversely affected by changes to the provisions of this law relating to the conditions for liability of members.
- <sup>2</sup> Cooperatives, whose members are personally liable for the obligations of the cooperative only by virtue of Article 689 of the previous Code of Obligations<sup>678</sup>, remain subject to the provisions of the previous law for five years.
- <sup>3</sup> During this period, resolutions on the full or partial exclusion of personal liability or an express finding of liability may be passed in the general meeting by an absolute majority of the votes cast. Article 889 paragraph 2 on departure does not apply.
- Art. 8**
- E. Business names
- <sup>674</sup> This Art. has now been reworded.  
<sup>675</sup> This Art. has now been reworded.  
<sup>676</sup> Repealed by Annex No 2 of the Mergers Act of 3 Oct. 2003, with effect from 1 July 2004 (AS 2004 2617; BBl 2000 4337).  
<sup>677</sup> Article no longer relevant.  
<sup>678</sup> AS 27 317

<sup>1</sup> Business names in existence when this Act comes into force that do not comply with its provisions may continue to be used unchanged for a further two years.

<sup>2</sup> If any change is made before the expiry of this deadline, the change must comply with the current law.

### Art. 9

F. Securities  
I. Registered securities

Savings bank and deposit account books, and savings and deposit certificates issued before this Act comes into force as registered securities are subject to the provisions of Article 977 on the cancellation of debt instruments even if the borrower has not expressly reserved the right in the instrument not to make payment without sight of the debt instrument or and without cancellation.

### Art. 10

II. Shares  
1. Nominal value

Shares that were issued before this Act comes into force may

1. continue to have a nominal value of less than 100 francs;
2. be reduced in nominal value to less than 100 francs in the event of a reduction in the basic capital within three years of this Act coming into force.

### Art. 11

2. Bearer shares not fully paid up

<sup>1</sup> Bearer shares and interim certificates issued before this Act comes into force are not subject to Articles 683 and 688 paragraphs 1 and 3.

<sup>2</sup> The legal relationship between the subscriber to and acquirer of these shares is governed by the previous law.

### Art. 12

III. Bills of exchange and cheques

Bills of exchange and cheques issued before this Act comes into force are governed by the previous law in all transactions.

### Art. 13

G. Community of creditors

The Ordinance of 20 February 1918<sup>679</sup> relating to the community of bond creditors and the provisions of the supplementary Federal Council Decrees<sup>680</sup> continue to apply to the cases to which they applied previously.

<sup>679</sup> [AS 34 231, 35 297, 36 623 893]

<sup>680</sup> [AS 51 673, 53 454, 57 1514, 58 934, 62 1088, 63 1342]

**Art. 14**<sup>681</sup>

H. ...

**Art. 15**J. Amendment of  
the Debt  
Collection and  
Bankruptcy Act ...<sup>682</sup>**Art. 16**

K. Relationship to the Banking Act  
I. General reservation  
The provisions of the Banking Act of 8 November 1934<sup>683</sup> are reserved.

**Art. 17**II. Amendment of individual provisions ...<sup>684</sup>**Art. 18**

L. Repeal of federal private law  
On the entry into force of this Act, the federal private law provisions that are inconsistent herewith, and in particular, the Third Division of the Code of Obligations entitled "Commercial Enterprises, Securities and Business Names" (Federal Act of 14 June 1881<sup>685</sup> on the Code of Obligations, Art. 552–715 and 720–880) are repealed.

**Art. 19**

M. Commencement of this Act

<sup>1</sup> This Act comes into force on 1 July 1937.

<sup>2</sup> Excepted from the foregoing is the Section on the community of bond creditors (Art. 1157–1182), the commencement date for which will be determined by the Federal Council.<sup>686</sup>

<sup>3</sup> The Federal Council is responsible for the implementation of this Act.

<sup>681</sup> Repealed by No I No c of the Annex to the IPLA of 18 Dec 1987, with effect from 1 Jan 1989 (AS **1988** 1776; BBl **1983** I 263).

<sup>682</sup> The amendments may be consulted under AS **53** 185.

<sup>683</sup> SR **952.0**

<sup>684</sup> The amendments may be consulted under AS **53** 185.

<sup>685</sup> [AS **5** 635, **11** 490; BS **2** 784 Art. 103 para. 1. BS **2** 3 Final Title Art. 60 para. 2]

<sup>686</sup> This section was brought into force in the version contained in the Federal Act of 1 April 1949. For the original version of the text, see AS **53** 185.

## Final Provisions on the Twenty-Sixth Title<sup>687</sup>

### Art. 1

A. Final Title of the Civil Code

The Final Title of the Civil Code<sup>688</sup> applies to this Act.

### Art. 2

B. Amendment in accordance with the new law  
I. In general

<sup>1</sup> Companies limited by shares and partnerships limited by shares that are entered in the commercial register when this Act comes into force, but which do not comply with the new statutory provisions, must amend their articles of association to the new provisions within five years.

<sup>2</sup> Companies which, despite being publicly required to do so through repeated notice in the Swiss Official Gazette of Commerce and in the cantonal official gazettes, do not within five years amend the provisions of their articles of association governing minimum capital, the minimum contribution and the participation and dividend rights certificates, will be dissolved by the court at the request of the commercial registrar. They may allow an additional period of a maximum of six months. Companies that were established before 1 January 1985 are exempted from the amendment of the provision of their articles of association on minimum capital. Companies whose participation capital on 1 January 1985 was more than twice the share capital are exempted from having to amend the statutory limit.

<sup>3</sup> Other provisions of the articles of association that are incompatible with the new law remain in force until they are amended, but for five years at the most.

### Art. 3

II. Individual provisions  
1. Participation and dividend rights certificates

<sup>1</sup> Articles 656a, 656b paragraphs 2 and 3, 656c and 656d as well as 656g apply to companies existing when this Act comes into force, including in cases where the articles of association or conditions of issue are contrary to the said articles. They apply to securities that are designated participation certificates or dividend rights certificates, have a nominal value and are recorded as liabilities on the balance sheet.

<sup>2</sup> The companies must include the conditions of issue for the securities mentioned in paragraph 1, adapted to Article 656f in the articles of association within five years, arrange for the required entries to be made in the commercial register and provide securities that are in

<sup>687</sup> Inserted by No III of the FA of 4 Oct. 1991, in force since 1 July 1992 (AS 1992 733; BBl 1983 II 745).

<sup>688</sup> SR 210



circulation and not designated as participation certificates with that designation.

<sup>3</sup> For securities other than those mentioned in paragraph 1 the new provisions governing the dividend rights certificates apply even if they are designated as participation certificates. Within five years, they must be designated in accordance with the new law and may no longer bear a nominal value. The articles of association must be amended accordingly. The right to convert them into participation certificates is reserved.

#### Art. 4

2. Refusal to accept registered shareholders

Further to Article 685*d* paragraph 1, the company may, on the basis of a provision of the articles of association, refuse to accept persons as acquirers of registered shares listed on the stock market, provided and for as long as their acceptance could prevent the company from providing evidence of the composition of the shareholder groups as required by federal legislation.

#### Art. 5

3. Shares with preferential voting rights

Companies that retain shares with preferential voting rights with a nominal value of under ten francs, in application of Article 10 of the Final and Transitional provisions of the Federal Act of 18 December 1936<sup>689</sup> on the Revision of Titles 24–33 of the Code of Obligations, as well as companies, where the nominal value the larger shares is more than ten times the nominal value of the smaller shares are not required to amend their articles of association in accordance with Article 693 paragraph 2 second sentence. However, they are not permitted to issue any new shares whose nominal value is more than ten times that of the smaller shares or less than ten per cent of the nominal value of the larger shares.

#### Art. 6

4. Qualified majorities

Where a company has adopted provisions in its articles of association governing qualified majorities for certain resolutions by simply reproducing provisions of the previous law, it may within one year of this Act coming into force resolve to amend such provisions in accordance by an absolute majority of the voting rights represented.

#### Art. 7

C. Amendment of federal legislation

...<sup>690</sup>

<sup>689</sup> See above.

<sup>690</sup> The amendments may be consulted under AS 1992 733.

**Art. 8**

D. Referendum This Act is subject to an optional referendum.

**Art. 9**

E. Commencement The Federal Council determines the commencement date.

**Final Provisions on the Second Section of Title XXXIV<sup>691</sup>**

1. ...<sup>692</sup>
2. ...<sup>693</sup>
3. The resolutions of the community of creditors passed under the previous law remain valid under the new law.

For resolutions passed after this Act comes into force, the provisions of the new law apply.

However, if a borrower has already been granted facilitations under the previous law by resolutions of the community of creditors that are equivalent or correspond to those provided for in Article 1170, appropriate account must be taken thereof in the application of this provision.

In all other respects, the Final and Transitional Provisions of the Federal Act of 18 December 1936 on the Revision of Titles XXIV–XXXIII of the Code of Obligations apply.

4. On commencement of this Act, contradictory provisions, and in particular the Ordinance of the Federal Council of 20 February 1918<sup>694</sup> on the Community of Bond Creditors, are repealed.
5. The Federal Council determines the commencement date of this Act.

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<sup>691</sup> Inserted by No II of the FA of 1. April 1949, in force since 1 Jan 1950 (AS 1949 I 791; BBl 1947 III 869).

<sup>692</sup> The amendments may be consulted under AS 1949 I 791.

<sup>693</sup> The amendments may be consulted under AS 1949 I 791.

<sup>694</sup> [AS 34 231, 35 297, 36 623 893]

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