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Part 1

General Part

Chapter 1

General Provisions

§ 1. Application of Act

(1) The provisions of the General Part of this Act apply to all contracts specified in this Act or other Acts, including employment contracts and other multilateral transactions, contracts which are not regulated by law but are not in conflict with the content and spirit of the law, and obligations which do not arise from a contract.

(2) If a contract has the characteristics of two or more types of contract provided by law, the provisions of law concerning such types of contract apply simultaneously, except provisions which cannot apply simultaneously or the application of which would be contrary to the nature or purpose of the contract.

(3) The provisions of this Act concerning contracts apply to contracts entered into by more than two parties (multilateral contract) unless they are contrary to the nature or purpose of the contract.

§ 2. Definition of obligation

(1) An obligation is a legal relationship which gives rise to the obligation of one person (obligated person or obligor) to perform an act or omission (perform an obligation) for the benefit of another person (entitled person or obligee), and to the right of the obligee to demand that the obligor perform the obligation.

(2) The nature of an obligation may oblige the parties to the obligation to take the other party's rights and interests into account in a certain manner. An obligation may also be confined thereto.

§ 3. Bases for obligation

An obligation may arise from:

1) a contract;

2) unlawful damage;

3) unjustified enrichment;

4) *negotiorum gestio*;

5) a public promise to pay;

6) other bases provided by law.

§ 4. Imperfect obligation

(1) An imperfect obligation is an obligation which the obligor may perform but the performance of which cannot be required by the obligee.

(2) The following are imperfect obligations:

1) an obligation arising from gambling, except for an obligation arising from a lottery or betting organised on the basis of a permit;

2) a moral obligation the performance of which complies with public mores;

3) an obligation assumed to secure performance of an imperfect obligation;

4) an obligation which is an imperfect obligation pursuant to law.

(3) Anything which has been delivered for an imperfect obligation to be performed shall not be reclaimed.

(4) The provisions of law concerning obligations apply to an imperfect obligation unless the application of such provisions is contrary to the nature of the imperfect obligation.

§ 5. Principle of party autonomy of Act

Upon agreement between the parties to an obligation or contract, the parties may derogate from the provisions of this Act unless this Act expressly provides or the nature of a provision indicates that derogation from this Act is not permitted, or unless derogation is contrary to public order or good morals or violates the fundamental rights of a person.

§ 6. Principle of good faith

(1) Obligees and obligors shall act in good faith in their relations with one another.

(2) Nothing arising from law, a usage or a transaction shall be applied to an obligation if it is contrary to the principle of good faith.

§ 7. Principle of reasonableness

(1) With regard to an obligation, reasonableness is to be judged by what persons acting in good faith would ordinarily consider to be reasonable in the same situation.

(2) In assessing what is reasonable, the nature of the obligation, the purpose of the transaction, the usages and practices in the fields of activity or professions involved and other circumstances shall be taken into account.

Chapter 2

Contract

Division 1

General Provisions

§ 8. Definition of contract

(1) A contract is a transaction between two or more persons (parties) by which one party undertakes or the parties undertake to perform an act or omission.

(2) A contract is binding on the parties.

§ 9. Entry into contract

(1) A contract is entered into by an offer being made and accepted or by the mutual exchange of declarations of intent in any other manner if it is sufficiently clear that the parties have reached an agreement.

(2) Upon acceptance of an offer, the contract is entered into when the acceptance reaches the offeror. In the case of acceptance by an act which is not an express declaration of intent, the contract is entered into as of the offeror becoming aware of the performance of the act unless, by virtue of the offer, practices which the parties have established between themselves or a usage, the contract is deemed to have been entered into as of the performance of the act.

(3) If certain terms must be agreed upon pursuant to an agreement between the parties or at the request of one party, the contract shall not be deemed to have been entered into until agreement has been reached on such terms, unless otherwise provided by law.

§ 10. Entry into contract by auction

(1) In the case of an auction, a contract is deemed to have been entered into upon acceptance of the best tender. The person conducting the auction is presumed to be authorised to accept the best tender.

(2) A tenderer shall be bound by the tender thereof until a better tender is made. In the absence of a better tender, the tenderer shall not be bound by the tender thereof if the tender is not accepted within a reasonable period of time as of it being made.

(3) If a tender is not followed by a better tender, the last tender shall be accepted. If several persons have made equal tenders at the same time and such tenders are not followed by a better tender, the person conducting the auction has the right to select the best tenderer from among the participants in the auction who made equal tenders.

(4) If the terms of an auction prescribe the right of the person conducting the auction to decide on the best tender, the best tender shall be accepted by publication of the corresponding decision within the period of time prescribed in the terms of the auction or, in the absence thereof, within a reasonable period of time. Until such time, persons who have made tenders shall be bound by their tenders.

§ 11. Format of contract

(1) A contract may be entered into orally, in writing or in any other form if no required format is provided for the contract by law.

(2) If, pursuant to law or an agreement between the parties or at the request of one party, a contract must be entered into in a specific format, the contract shall not be deemed to have been entered into until the specified format is given to the contract.

(3) If a contract must be entered into in a specific format, agreements on security, other accessory obligations, assignment of claims or assumption of obligations arising from the contract shall also be entered into in such format unless otherwise provided by law or the contract.

(4) A written contract is deemed to have been entered into when the parties have signed the contract or have exchanged contractual documents or letters signed by both parties. The law may provide that a written contract is also deemed to have been entered into when the contract has been signed by the obligated party only.

(5) If a contract must be notarially certified or notarially attested, the contract is entered into as of the notarial certification or notarial attestation of the contract. If mutual declarations of intent made for the entry into a contract are authenticated or certified separately, the contract is entered into as of certification or attestation of the last declaration of intent.

§ 12. Validity of contract

(1) The validity of a contract is not affected by the fact that, at the time of entry into the contract, performance of the contract was impossible or one of the parties did not have the right to dispose of the thing or right which is the object of the contract.

(2) A contract shall also be valid with regard to the universal successors of the parties.

§ 13. Amendment and termination of contract

(1) A contract may be amended or terminated on the agreement of the parties or on another basis prescribed by the contract or law.

(2) If a contract is entered into in a specific format pursuant to an agreement between the parties, amendment or termination of the contract need not be in such format unless the contract provides otherwise.

(3) If a contract prescribes amendment or termination of the contract in a specific format, a party cannot rely on such condition of the contract if the other party could infer from the party's conduct that the party agreed to the amendment or termination of the contract in another format.

§ 14. Precontractual negotiations

(1) Persons who engage in precontractual negotiations or other preparations for entering into a contract shall take reasonable account of one another's interests and rights. Information exchanged by the persons in the course of preparation for entering into the contract shall be accurate.

(2) Persons who engage in precontractual negotiations or other preparations for entering into a contract shall inform the other party of all circumstances with regard to which the other party has, based on the purpose of the contract, an identifiable essential interest. There is no obligation to inform the other party of such circumstances of which the other party could not reasonably expect to be informed.

(3) If persons who engage in precontractual negotiations do not reach an agreement, no legal consequences arise for the persons from the negotiations. A person shall not engage in negotiations in bad faith, in particular if the person has no real intention of entering into a contract, nor break off negotiations in bad faith.

(4) If information not subject to disclosure is submitted to a person in the course of precontractual negotiations, the person shall not disclose such information to other persons or use it in bad faith in the person's own interests whether or not a contract is entered into.

§ 15. Party's awareness of deficiencies of contract

(1) If a party has assumed the obligation to engage in preparations for the contract or to inform the other party of circumstances relating to the preparations for the contract and the contract is void due to failure to adhere to a formality, the other party shall be compensated for the damage created due to the fact that the other party believed the contract to be valid.

(2) If, upon entry into a contract, one party is or should be aware of circumstances which do not constitute a violation of formalities but render the contract void or if such circumstances are caused by the party, the party shall compensate the other party for the damage specified in subsection (1) of this section.

(3) Compensation for damage pursuant to the provisions of subsection (2) of this section shall not be demanded if the other party was also aware or should have been aware of circumstances rendering the contract void or if the contract was rendered void due to the party's restricted active legal capacity or the unconformity of the contract with good morals.

(4) If a person was unaware of circumstances with legal effect due to gross negligence, it is deemed that the person should have been aware of the circumstances.

§ 16. Offer

(1) An offer is a proposal to enter into a contract in a manner which is sufficiently defined and which indicates the intention of the offeror to be legally bound by the contract to be entered into if the proposal is accepted.

(2) A proposal to enter into a contract is not an offer if the person making the proposal expressly indicates that the person does not consider the person to be bound by the proposal or if the nature of the proposed contract or other circumstances dictate that the person making the proposal is not bound by the proposal. Such proposal is deemed to be an invitation to make offers.

(3) A proposal which is addressed to a previously unspecified set of persons and is made by sending advertisements, price lists, rates, samples, catalogues or the like or by displaying goods or by offering goods or services to a previously unspecified set of persons on a public computer network is deemed to be an invitation to make offers, unless the person making the proposal clearly indicates that it is an offer.

§ 17. Offer with fixed term for acceptance

(1) If the term for acceptance is fixed in an offer, the offer is effective and may be accepted until the end of such term. An offer is not accepted in due time if the acceptance does not reach the offeror during the term for acceptance

(2) A term for acceptance fixed by the offeror in a letter begins to run as of the date shown in the letter. If the beginning of the term for acceptance is not shown in the letter, the

term for acceptance begins to run as of the moment the letter is posted.

(3) If an offer is made in person, by telephone or by other means of instantaneous communication, the term for acceptance begins to run as of the moment the offer reaches the offeree unless otherwise indicated by the offeror.

§ 18. Offer without fixed term for acceptance

(1) An offer which is made in person without a fixed term for acceptance lapses if the offer is not accepted immediately, unless the circumstances indicate otherwise. The same applies to an offer made by telephone or other means of instantaneous communication.

(2) An offer which is not made in person and does not have a fixed term for acceptance is effective during the time which is ordinarily necessary for an acceptance to reach the offeror, with due account being taken of the circumstances relating to the entry into the contract, including the rapidity of the means of communication selected by the offeror.

§ 19. Lapse of offer

(1) An offer lapses if it is not accepted in due time or when a rejection of the offer reaches the offeror.

(2) An offer does not lapse if the offeror, after making the offer but before an acceptance reaches the offeror, is declared to have limited active legal capacity or dies or is declared a bankrupt or the property thereof is subjected to compulsory administration, unless it may be presumed that the offeror intended for the offer to lapse in such case.

§ 20. Acceptance

(1) An acceptance is assent to enter into a contract indicated by a direct declaration of intent or by an act.

(2) Silence or inactivity is deemed to be acceptance only if so provided by law, an agreement between the parties, practices which the parties have established between themselves or a usage observed in their field of activity or profession.

(3) If a person whose economic or professional activities include performance of certain transactions or supply of certain services receives an offer for the performance of such transactions or supply of such services from a person with whom the person has continuing business relations, the person shall respond to the offer within a reasonable time. In such case, silence is deemed to be acceptance.

§ 21. Modified acceptance

(1) A response to an offer which contains conditions which materially alter the conditions of the offer is a rejection of the offer and also a new offer.

(2) A response which contains conditions which do not materially alter the conditions of the offer is an acceptance unless the offeror objects to the altered conditions without delay. In such case, the conditions of the contract are the conditions of the offer with the modifications contained in the acceptance, unless some other intention is indicated in the offer or acceptance.

(3) If an offer and the acceptance refer to conflicting standard terms or conditions, the provisions of § 40 of this Act apply.

§ 22. Late acceptance

(1) If an acceptance does not reach the offeror in due time, the acceptance is deemed to have been sent in due time if it has been sent in such circumstances that, if its transmission had been normal, it would have reached the offeror in due time.

(2) If an acceptance does not reach the offeror in due time because it was not sent in due time, the offeror may deem the acceptance to have reached the offeror in due time if the offeror informs the offeree thereof without delay. If the offeror does not do so, the acceptance is deemed to be a new offer.

(3) If an acceptance does not reach the offeror in due time but it is evident to the offeror that it was sent in due time, such acceptance is deemed to be a late acceptance only if the offeror informs the offeree without delay of the late acceptance. If the offeror does so, the acceptance is deemed to be a new offer.

(4) If an acceptance does not reach the offeror or does not reach the offeror in due time but, pursuant to law, is deemed to have reached the offeror in due time, the contract is deemed to have been entered into at the time the acceptance would have reached the offeror if there had been no delay.

§ 23. Obligations of parties

(1) The obligations of the parties may be set out in the contract or provided by law. The obligations of the parties may also arise from:

1) the nature and purpose of the contract;

2) any practice the parties have established between themselves;

3) any usage observed in the profession or field of activity of the parties;

4) the principles of good faith and reasonableness.

(2) A party shall co-operate with the other party as necessary to enable performance of the obligations by the other party.

§ 24. Contents of obligations of parties

(1) A party may be obligated by a contract to achieve a specific result or to do all that is reasonably possible to achieve that result.

(2) If a party is obligated to do all that is reasonably possible to achieve a result, the party is obligated to make such efforts as reasonable persons in the same field of activity or profession would make under the same circumstances.

(3) If a contract does not expressly indicate whether a party is obligated to achieve a specific result or to do all that is reasonably possible to achieve that result, the obligations of the party shall be determined by taking primarily the following into account:

1) the nature and purpose of the contract;

2) the manner in which obligations are expressed in the contract;

3) the terms and conditions of the contract;

4) the probability of achieving the desired result;

5) the ability of the other party to influence the performance of the obligation.

§ 25. Usages and practices

(1) In the case of contracts entered into with respect to the economic or professional activities of the parties, the parties are bound by any usage they have agreed to apply and by any practice they have established between themselves.

(2) Unless the parties agree otherwise in the case of contracts entered into with respect to their economic or professional activities, they are also bound by any usage which persons who enter into contracts in the same field of activity or profession generally consider applicable and take into account, except where application of such usage would be contrary to law or would be unreasonable under the circumstances.

§ 26. Terms deliberately left open

(1) When entering into a contract, the parties may leave some of the terms open with the intention of reaching an agreement on such terms in the future or leaving the terms to be

determined by one party or a third party (terms deliberately left open).

(2) If the parties do not reach an agreement on a term left open or if a party or a third party does not determine the term left open, the validity of the contract is not affected unless it can be presumed that the parties intended otherwise.

(3) If a term left open is to be determined by a party or a third party, the term must conform to the principles of good faith and reasonableness.

(4) If a term left open is to be determined on the basis of circumstances independent of the party which do not exist at the time the term is to be determined, the term shall be determined on the basis of the nearest equivalent circumstance.

(5) If a term determining the extent of a party's obligation is left open, the other party has the right to determine the term unless otherwise provided by an agreement between the parties or dictated by the nature of the contract.

(6) If a term is to be determined by several third parties, the consent of all of them is required to determine the term. If an amount of money is to be determined by several third parties, the average amount determined by them shall be taken as the term.

(7) If a term left open is to be determined by a party but the party fails to do so during the agreed period of time or, if no such agreement exists, during a reasonable period before the time by which performance of the obligation may be required, or during a reasonable additional term established by the other party for determining the term left open, the right to determine the term transfers to the other party.

(8) If a term left open is to be determined by a party, the party shall determine the term by making a declaration to the other party. If a term is to be determined by a third party, the third party shall determine the term by making a declaration to both parties.

(9) A party may require that a term left open be determined by a court if:

1) the parties fail to reach an agreement on the term;

2) a third party fails to determine the term during the agreed period of time or, if no such agreement exists, during a reasonable period of time before the time by which performance of the obligation may be required;

3) the other party fails to determine the term left open after the right to determine the term has transferred to the other party pursuant to the provisions of subsection (7) of this section.

(10) A court shall determine the terms left open in a contract based on the nature and purpose of the contract.

(11) A party may also require that a court determine a term left open if the term determined by the other party or a third party does not conform to the principles of good faith and reasonableness.

§ 27. Absence of agreement on fundamental terms

(1) If the parties have not agreed or only believe that they have agreed on a fundamental term determining their rights and obligations, the contract shall be valid if it can be presumed that the contract would have been entered into even without an agreement on such term.

(2) In the case specified in subsection (1) of this section, a term which is reasonable based on the circumstances, the intention of the parties, the nature and purpose of the contract and the principle of good faith applies.

§ 28. Determination of price

(1) Contracts entered into in economic or professional activities are presumed to have a price.

(2) Where a contract does not determine the price or a method for determining the price and the nature of the contract or other circumstances do not dictate the price or the method of determining the price, the price to be paid shall be the price generally charged at the time of the entry into the contract at the place of performance of the contract for the performance of such contractual obligations or, if no such price can be determined, a price reasonable under the circumstances.

§ 29. Interpretation of contract

(1) A contract shall be interpreted according to the actual common intention of the parties. If such intention differs from the ordinary meaning of the words used in the contract, the common intention of the parties prevails.

(2) A contract shall not be interpreted on the basis of an incorrect denotation or expression which the parties used due to an error or from a desire to conceal their actual intention.

(3) If one party understands a term or condition of a contract to have a particular meaning and the other party was or should have been aware of such meaning at the time of entry into the contract, the term or condition shall be interpreted according the understanding of the first party.

(4) If the actual common intention of the parties cannot be determined, the contract shall be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances.

(5) In interpreting a contract, regard shall be had, in particular, to:

1) the circumstances in which the contract was entered into, including the precontrac-

tual negotiations;

2) the interpretation which the parties have previously given to the same term or condition of the contract;

3) the conduct of the parties before and subsequent to entry into the contract;

4) the nature and purpose of the contract;

5) the meaning commonly given to terms and expressions in the field of activity or profession concerned;

6) usages and practices established between the parties.

(6) A term or condition of a contract shall be interpreted together with the other terms and conditions of the contract and shall be given the meaning to be inferred from the nature and purpose of the whole contract.

(7) If a word or expression has several meanings, the word or expression shall be understood in the meaning which best conforms to the nature and purpose of the contract.

(8) In interpreting a term or condition of a contract, an interpretation which renders the term or condition lawful or effective shall be preferred unless otherwise provided by law.

(9) Where a contract is drawn up in several languages which are equally authoritative, the interpretation according to the version in which the contract was originally drawn up shall be preferred if there is any discrepancy between the versions.

§ 30. Acknowledgement of obligation

(1) A contract in which performance of an obligation is promised in such a manner that the promise creates an independent obligation or in which the existence of an obligation is recognised is an acknowledgement of obligation.

(2) An acknowledgement of obligation shall be made by the obligated party in writing unless otherwise provided by law.

(3) An acknowledgement of obligation need not be in writing if it is made on the basis of a current account or if the obligor acknowledges an obligation which has arisen in the course of the economic or professional activities thereof.

§ 31. Merger clause

(1) If parties have agreed in a written contract that the contract prescribes all of the terms of the contract (merger clause), any prior declarations of intent or agreements of the parties which are not embodied in the contract are deemed not to form part of the contract.

The prior conduct of the parties shall also not affect the contract.

(2) If a merger clause is prescribed in standard terms, it shall be presumed that the parties intended their prior declarations of intent, acts or agreements to be deemed not to form part of the contract.

(3) In the case of a merger clause, the prior declarations of intent of the parties may be used to interpret the contract.

(4) If, after entering into a contract, a party indicates to the other party by a declaration of intent or by conduct that the party considers a prior declaration of intent or agreement of the parties to form part of the contract or that the party will rely on the prior conduct of the parties, the party shall not rely on a merger clause to this extent.

§ 32. Written confirmation

(1) If a contract is entered into with respect to the economic or professional activities of the parties but is not in written form and if, within a reasonable time after entry into the contract, one party sends a written document to the other party confirming the content of the contract (written confirmation) which contains terms which do not differ materially from the terms agreed upon earlier or do not materially alter them, such terms shall become part of the contract unless the other party objects to them without delay after receipt of the written confirmation.

(2) The provisions of subsection (1) of this section do not apply if the party which sent the written confirmation knew or should have known that the contract had not been entered into or if the contents of the written confirmation differ from the terms agreed upon earlier to such extent that the person who sent the written confirmation cannot reasonably rely on the other party's consent to the contents of the written confirmation.

§ 33. Preliminary contract

(1) A preliminary contract is an agreement under which the parties undertake to enter into a contract in the future under the terms agreed upon in the preliminary contract.

(2) If, pursuant to law, a contract is to be entered into in a specific format, the preliminary contract shall also be entered into in the same format.

§ 34. Consumer

For the purposes of this Act, a consumer is a natural person who performs a transaction not related to an independent economic or professional activity.

Division 2

Standard Terms

§ 35. Definition of standard term

(1) A contract term which is drafted in advance for use in standard contracts or which the parties have not negotiated individually for some other reason, and which the party supplying the term uses with regard to the other party who is therefore not able to influence the content of the term, is deemed to be a standard term.

(2) It is presumed that standard terms have not been negotiated individually in advance.

(3) Standard terms may be embodied in a contract or form a separate part of a contract. Standard terms may be terms of a contract regardless of the scope of the terms, the manner in which the terms are expressed in the contract or the form in which the contract is entered into.

(4) The general provisions for entering into contracts apply to entering into contracts with standard terms unless otherwise provided for in this Division.

(5) Agreements which derogate from the provisions of §§ 35–39 or 41–45 of this Act to the detriment of the party with regard to whom the standard terms were applied are void.

§ 36. Application of provisions

(1) The provisions of this Division do not apply to contracts concerning relationships under the law of succession or family law or to contracts for the foundation of companies, other legal persons and civil law partnerships, or for the management thereof, or to terms or conditions of a contract which are based on provisions of law which must not be derogated from pursuant to an agreement between the parties.

(2) If the other party to a contract with standard terms is a consumer whose residence is in Estonia or in a Member State of the European Union and the contract was entered into as a result of a public offer, advertisement or other such activity in Estonia or the contract is essentially related to the territory of Estonia for any other reason, the provisions of this Division apply even if the place of business of the party supplying the terms or, if no place of business exists, the residence or seat of such party is not in Estonia, regardless of which state's law is applicable to the contract.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(3) If the parties to a contract with standard terms act for purposes relating to their economic or professional activities and their places of business related to the contract or the performance thereof are in Estonia, the provisions of this Division apply to the contracts entered into between them regardless of which state's law is applicable to the contract.

§ 37. Standard terms as part of contract

(1) Standard terms are part of a contract if the party supplying the standard terms clearly refers to them as part of the contract before entering into the contract or while entering into the contract and the other party has the opportunity to examine their contents. Standard terms are also part of a contract if their existence could be presumed from the manner in which the contract was entered into and the other party was given the opportunity to examine their contents.

(2) The parties may, taking into account the provisions of subsection (1) of this section, agree in advance that standard terms apply to certain types of contracts.

(3) Standard terms the contents, wording or presentation of which are so uncommon or unintelligible that the other party cannot, based on the principle of reasonableness, have expected them to be included in the contract or which the party cannot understand without considerable effort are not deemed to be part of the contract.

§ 38. Standard terms and individual agreement

If the content of a standard term contradicts a term individually agreed upon by the parties, the term individually agreed upon applies.

§ 39. Interpretation of standard terms

(1) Standard terms shall be interpreted according to the meaning that reasonable persons of the same kind as the other party would give to them in the same circumstances. In the case of doubt, standard terms shall be interpreted to the detriment of the party supplying the standard terms.

(2) A standard term which is void shall not be interpreted such as to give it content by which the term is valid. If a term can be divided into several independent parts and one of them is void, the other parts remain valid.

§ 40. Conflicting standard terms

(1) If, upon entering into a contract, the parties each refer to their own standard terms, the contract is deemed to have been entered into under the terms which are not in conflict with each other. The provisions of law concerning the type of contract concerned apply in lieu of any conflicting terms.

(2) In the case of conflicting standard terms, the contract is not deemed to have been entered into if one party has explicitly indicated before the contract is entered into or without

delay thereafter and not by way of the standard terms that the party does not deem the contract to have been entered into. A party does not have this right if the party has performed the contract in part or in full or has accepted performance by the other party.

§ 41. Validity of contract with standard terms

If a standard term is void or is deemed not to be part of the contract, the rest of the contract is valid unless the party supplying the term proves that that the party would not have entered into the contract without the standard term which is void or is deemed not to be part of the contract. The provisions of law concerning the type of contract concerned apply in lieu of such terms.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

§ 42. Invalidity of standard terms

(1) A standard term is void if, taking into account the nature, contents and manner of entry into the contract, the interests of the parties and other material circumstances, the term causes unfair harm to the other party, particularly if it causes a significant imbalance in the parties' rights and obligations arising from the contract to the detriment of the other party or if the standard term is contrary to good morals.

(2) Unfair harm is presumed if a standard term derogates from a fundamental principle of law or restricts the rights and obligations arising for the other party from the nature of the contract such that it becomes questionable as to whether the purpose of the contract can be achieved. A standard term is not deemed to be unfair if it relates to the main subject matter of the contract or to the relationship between the price and the value of the services or goods supplied in exchange.

(3) In a contract where the other party is a consumer, a standard term is considered to be unfair if, in particular, the term:

1) precludes the liability arising from law of the party supplying the standard term or restricts such liability in the case where the death of the other party or damage to the health of the other party is caused or in other cases where damage is caused intentionally or due to gross negligence;

2) precludes or unreasonably restricts the claims of the other party *vis a vis* the party supplying the terms or another party, including the opportunity to set off claims against the claims of the party supplying the terms in the event of total or partial non-performance of any of the contractual obligations by the party supplying the terms;

3) precludes or unreasonably restricts the other party's right arising from law to refuse acceptance of performance of an obligation and to refuse performance of the party's obligations in the case of a mutual contract, especially if the right to refuse is made subject to admittance of a deficiency by the party supplying the term;

4) precludes the right of the other party to claim compensation from the party supplying the term for damage caused by total non-performance of the contract or the right to terminate the contract if the party supplying the term performs an obligation in part and the other party has no reasonable interest in partial performance;

5) prescribes that the other party shall, in the event of non-performance of the party's obligations, pay an unreasonably high contractual penalty to the party supplying the term or an unreasonably high predetermined amount of compensation for damage or other compensation, or the other party is deprived of the opportunity to prove the actual size of the damage;

6) restricts the obligation of the party supplying the term to perform obligations undertaken by a representative of the party or makes performance of the obligations of such party subject to compliance with a particular formality on unreasonable grounds;

7) prescribes that a third party is liable for non-performance of the obligations of the party supplying the term;

8) precludes or restricts rights which the other party could exercise pursuant to law with regard to a third party if the rights arising from the contract to the party supplying the term transfer to such third party;

9) prescribes an unreasonably short term for the other party to submit claims, including an unreasonably short limitation period for claims arising from the contract or law;

10) deprives the other party of the opportunity to protect the party's rights in court or unreasonably hinders such opportunity from being exercised;

11) unreasonably restricts the other party's right to use evidence or imposes on the party a burden of proof which, according to law, should lie with the party supplying the term;

12) prescribes that, in the event of a breach of the contract by the party supplying the term, the other party may exercise the party's legal remedies against the party supplying the term only if the other party has previously filed a claim against a third party with a court;

13) prescribes that performance of the obligations of the party supplying the term is made subject to a circumstance the occurrence of which depends on the party's will alone, at the same time as the other party undertakes an obligation which is binding on the party regardless of such circumstance;

14) prescribes the right of the person supplying the term to alter the terms or conditions of the contract unilaterally for a reason or in a manner not provided by law or specified in the contract;

15) prescribes that the party supplying the term has the right to determine or increase the price of a movable or service at the time of delivery of the movable or provision of the service without the other party having the right to terminate the contract, except in cases where such terms are lawful terms for price indexation and expressly prescribe the method of adjusting the price;

16) provides the party supplying the term with a unilateral right to deliver a movable

without good reason or provide a service with characteristics other than those agreed upon;

17) provides the party supplying the term with the right to unilaterally determine whether the movable delivered or service supplied or the performance of any other obligation is in conformity with the terms and conditions of the contract;

18) provides the party supplying the term with the exclusive right to interpret the contract terms;

19) provides the party supplying the term with the right to unilaterally determine the term for the performance of the party's obligations or prescribes an unreasonably long or unspecified term for the performance of the obligations of the party supplying the term;

20) prescribes that the other party must perform the obligations thereof even if the party supplying the term does not perform the obligations thereof, or if the other party is deprived of the right to require the party supplying the term to perform the obligations thereof;

21) prescribes the obligation of the other party to make an unreasonably large advance payment before the party supplying the term performs the obligations thereof;

22) provides the party supplying the term with the right to require security of unreasonably high value;

23) prescribes the obligation of the other party to accept goods or services which were not ordered in addition to the goods and services agreed upon;

24) prescribes the obligation of the other party to enter into another contract with the party supplying the term or a third party, unless entry into such other contract is reasonable taking into account the relationship between such contract and the contract with standard terms;

25) provides the party supplying the term with the right to transfer the rights and obligations thereof arising from the contract to a third party without the consent of the other party where this may serve to reduce the likelihood of the contract being performed;

26) precludes or unreasonably restricts the right of the other party to assign claims;

27) prescribes that, at the end of the term of a contract for a specified term, the contract is automatically extended for a period exceeding one year without the other party making a corresponding request;

28) prescribes that a contract for a specified term is extended at the end of the term if the other party does not give notice of the opinion of the party with regard to the extension of the contract at an unreasonably early time before the end of the term;

29) provides the party supplying the term with the right to terminate the contract without giving reasons for the termination if the same right is not provided to the other party;

30) prescribes that, upon unilateral termination of the contract by the party supplying the term, the party may refuse to refund the sums paid by the other party for obligations which

the party supplying the term has not yet performed;

31) prescribes an unreasonably long term of advance notice for the other party to terminate the contract;

32) prescribes an unreasonably short term of advance notice for the party supplying the term to terminate the contract;

33) provides the party supplying the term with the right to terminate a contract entered into for an unspecified term without good reason and without a reasonable period of advance notice;

34) precludes or unreasonably restricts the right of the other party to terminate the contract where the party supplying the term fails to perform a fundamental obligation thereof arising from the contract;

35) prescribes that declarations of intent are to be made in a manner other than that provided by law and this causes harm to the other party, except where such specification applies to the format of the declaration of intent of the other party or unless it is prescribed that the party supplying the term may deem the address given thereto by the other party to be correct until the party supplying the term is notified of a new address;

36) enables the party supplying the term to make use of an unreasonably long or insufficiently determined term for acceptance or refusal of an offer;

37) prescribes that, upon performance or non-performance of a particular act, a declaration of intent of a party is deemed to have been made or not to have been made, unless the party supplying the term undertakes to specifically notify the other party of the consequences of the other party's conduct and gives the other party a reasonable term for confirming the declaration of intent.

§ 43. Specifications concerning credit institutions

(1) The terms specified in clause 42 (3) 14) of this Act is not deemed to be unfair for the other party if a credit institution or other supplier of financial services reserves the right under the standard terms to alter, with good reason and without advance notice, the rate of interest or other charge for financial services to be paid by the other party or to the other party, on the condition that the credit institution or other supplier of financial services is required to immediately inform the other party or other parties of such alteration and that the other parties have the right to terminate the contract immediately.

(2) The terms specified in clause 42 (3) 14) of this Act is not deemed to cause unfair harm to the other party if a credit institution or other supplier of financial services reserves the right under the standard terms to unilaterally alter the terms of a contract entered into for an indefinite period without a good reason specified in the contract if alteration of the terms is not unfair with regard to the other party and if the credit institution or other supplier of financial services undertakes to give advance notice to the other party of any alteration of the terms and to grant the other party the right to terminate the contract immediately.

§ 44. Contracts relating to economic or professional activities

If a standard term specified in subsection 42 (3) of this Act is used in a contract where the other party to the contract is a person who entered into the contract for the purposes of the economic or professional activities of the person, the term is presumed to be unfair.

§ 45. Requirement to terminate application of unfair standard terms

A person or body provided by law may, pursuant to the procedure provided by law, require that a party supplying an unfair standard term terminates application of the term and that the person recommending application of the term terminates and withdraws such recommendation.

Division 3

Contracts Negotiated Away From Business Premises

§ 46. Definition of contracts negotiated away from business premises

(1) A contract negotiated away from business premises is a contract for the delivery of movables or the provision of services where a person engaged in economic or professional activities (supplier) makes an offer to a consumer or makes a proposal to negotiate entry into a contract:

1) in the dwelling or place of work of the consumer or in close proximity thereto, except where the visit to the consumer's dwelling or place of work in order to make the offer or proposal takes place at the express prior request of the consumer;

2) by addressing the consumer unexpectedly in a public transport vehicle or in the street;

3) outside the business premises of the supplier at a recreational event organised by the offeror or a third party.

(2) The provisions concerning contracts negotiated away from business premises do not apply to contracts where the consumer pays the charge prescribed by the contract upon entry into the contract and the amount of the charge does not exceed 15 euro.

(11.02.2004 entered into force 15.04.2004 - RT I 2004, 13, 86)

§ 47. Application of provisions

(1) The provisions of this Division also apply if the supplier visited the place of work or dwelling of the consumer at the express prior request of the consumer but the consumer, while requesting contractual negotiations, did not know and did not have to know that the offer of movables or services regarding which the contract was entered into was part of the supplier's economic or professional activities.

(2) (Repealed - 19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(3) If a contract negotiated away from business premises is entered into in Estonia with a consumer whose residence is in Estonia or in a member state of the European Union, the provisions of this Division apply regardless of which state's law applies to the contract.

§ 48. Informing consumer of right of withdrawal

(1) A supplier shall inform a consumer in writing or by means of any other durable medium accessible by the consumer of the consumer's right to withdraw from the contract and of the manner and term for exercising such right, setting out the name and address of the supplier and the time of sending or giving the notice.

(2) A notice specified in subsection (1) of this section shall enable identification of the contract regarding which the notice is given. The notice shall be given to the consumer in a manner which enables the consumer to understand his or her rights. Receipt of a notice by a consumer shall be proved by the supplier.

§ 49. Right of withdrawal

(1) A consumer may withdraw from a contract negotiated away from business premises within fourteen days as of receipt of a notice specified in § 48 of this Act. If the consumer receives the notice before the contract is entered into, the term of fourteen days shall be deemed to commence as of the contract being entered into.

(11.02.2004 entered into force 15.04.2004 - RT I 2004, 13, 86)

(2) A consumer is deemed to have used the right of withdrawal within the specified term if he or she has sent a corresponding notice to the supplier within the term specified in subsection (1) of this section.

(3) (Repealed - 19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(4) "If a consumer withdraws from a contract, the sums paid by the consumer shall be refunded to him or her immediately but not later than within thirty days as of the withdrawal from the contract.

(11.02.2004 entered into force 15.04.2004 - RT I 2004, 13, 86)

§ 50. Prohibition on violation of provisions

A person or body provided by law may, pursuant to the procedure provided by law, require a supplier who has violated the provisions of this Division to terminate such violation and refrain from future violation.

§ 51. Mandatory nature of provisions

Agreements which derogate from the provisions of this Division to the detriment of the consumer are void.

Division 4

Distance Contracts for Delivery of Goods or Provision of Services

§ 52. Definition of distance contract

(1) A contract for the delivery of goods or the provision of services entered into between a consumer and the person supplying the object or service for the purposes of the economic or professional activities thereof (supplier) is deemed to be a long distance contract if:

1) the contract is entered into under a marketing or service-provision scheme used by the supplier for the entry into of such contracts, and

2) the contract is entered into after the supplier has made an offer or has made a proposal to the consumer to make an offer, and

3) the supplier and the consumer are not present simultaneously at the same place upon entry into the contract, and

4) the offer and the declaration of intent of the consumer to undertake contractual obligations (order) are made by a means of communication.

(2) Any method which enables a consumer and a supplier who are not in the same place at the same time as one another to organise the exchange of information necessary for negotiations and entry into a contract, in particular the use of telephone, radio, computer, facsimile or television or the delivery of addressed or unaddressed printed matter, including a catalogue or a standard letter, to a consumer, or press advertising with an order form, is deemed to be use of a means of distance communication.

§ 53. Application of provisions

(1) The provisions of this Division apply to a distance contract entered into with a consumer whose residence is in Estonia or in a Member State of the European Union if the contract was entered into as a result of a public offer, advertisement or other such activity in Estonia or is essentially related to the territory of Estonia for any other reason, regardless of which state's law applies to the contract.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(2) The provisions of this Division do not apply to contracts which are entered into:

1) by using automatic vending machines;

2) by means of a public telephone with a provider of telecommunications services if the object of the contract is use of a public telephone;

3) for construction work or the transfer of an immovable, or with regard to a real right in an immovable.

(3) The provisions of §§ 54–59 of this Act do not apply to contracts which are entered into:

1) with regard to foodstuffs, beverages or other goods intended for everyday consumption which are delivered to the residence or workplace of the consumer on a frequent and regular basis;

2) with regard to transport, accommodation, catering or leisure services if, upon entry into the contract, the supplier undertakes to provide such services by a specified date or within a specified term.

(4) The provisions of clause 54 (1) 7) and § 56 of this Act do not apply to contracts entered into:

1) for performance of authorisation agreements relating to the issue of instruments the price of which on the money market varies regardless of the supplier, such as securities, money-market instruments, investment instruments, transactions with derivative instruments and exchange and interest rate instruments;

2) for delivery of goods manufactured taking into account the personal needs of the consumer who is a party to the contract;

3) for delivery of goods manufactured according to the conditions established by the consumer;

4) for delivery of goods which due to their nature cannot be returned or are highly perishable or the use-by date of which has expired;

5) for delivery of newspapers, journals or other periodicals;

6) for betting or lottery services;

7) for delivery of audio or video recordings or computer software if the consumer has opened the package;

8) at an auction.

(5) If a distance contract also conforms to the provisions concerning package travel contracts or contracts relating to purchase of right to use buildings on timeshare basis, the provisions of this Division apply together with the specifications provided for such types of contract.

(6) The provisions of this Division shall not preclude or restrict application of other provisions provided by law for the protection of consumers.

§ 54. Informing consumer

(1) Within a reasonable period of time before a contract is entered into, the consumer shall be provided with the following information:

1) the name and address of the supplier;

2) the main characteristics of the goods or services;

3) the estimated time of entry into force of the contract;

4) the price of the goods or services, including taxes and other components of the price and the size thereof;

5) the size of the postal charges, transport costs and taxes which are not included in the price and the costs of using postal services or means of communication if such costs exceed the basic rate;

6) the procedure for payment for the goods or services and the circumstances relating to delivery of the goods or provision of the services and to performance of the contract;

7) the consumer's right of withdrawal pursuant to § 56 of this Act;

8) the term of validity of the offer and the offered price;

9) the minimum term of the contract if the contract is performed continuously or recurrently during a specific term;

10) whether the supplier has the right to deliver goods or provide services other than those ordered or to refuse to deliver the goods or provide the services;

11) if the object is acquired or the service is used on credit, the right of the consumer to withdraw from the credit contract pursuant to the provisions of § 57 of this Act.

(2) The information specified in subsection (1) of this section shall, taking into account the means of communication used, be provided in good faith, in a clear and comprehensible manner, in compliance with good morals and in a manner indicating the commercial purpose of the offer. In the case of communication by telephone, the name of the supplier and the commercial purpose of the telephone call shall be made clearly known to the consumer at the beginning of the conversation.

§ 55. Confirmation of information

(1) If the information specified in subsection 54 (1) of this Act is not communicated to the consumer in writing or by means of any other durable medium accessible by him or her, such information shall be confirmed in writing or by means of any other durable data medium accessible by the consumer not later than during the time of the performance of the contract or, in the case of movables, not later than at the time of delivery thereof.

(2) The following shall be communicated to a consumer in any event:

1) information on the conditions of the right of withdrawal and the details of exercising such right, pursuant to § 56 of this Act;

2) the address of the supplier's place of business to which complaints may be submitted;

3) information on after-sales servicing;

4) information on preconditions for the liability of the supplier and on the existence and conditions of warranty;

5) the conditions for cancellation of a contract if the contract is entered into for an unspecified term or for a term exceeding one year.

(3) The provisions of subsections (1) and (2) of this section do not apply to services which are provided directly by a means of communication and on one occasion only and the charge for which is calculated by the provider of the telecommunications service. The consumer shall also in this case have the opportunity to obtain the address of the supplier's place of business to which complaints can be submitted.

§ 56. Right of withdrawal from contract

(1) A consumer may withdraw from a distance contract within fourteen days. In the case of goods, the term shall commence as of the day on which the consumer receives the goods or, in the case of delivery of goods of the same type, the first part of the goods and on which the obligations provided for in § 55 of this Act are performed. In the case of services, the term shall commence as of the date of entry into the contract if the obligations provided for in § 55 of this Act have been performed.

(11.02.2004 entered into force 15.04.2004 - RT I 2004, 13, 86)

(2) If the supplier has failed to perform the obligations provided for in § 55 of this Act, the consumer may withdraw from the contract within three months as of the date on which the consumer receives the goods or, in the case of services, as of the date of entry into the contract. If information specified in § 55 of this Act is communicated during this three-month term, the consumer may withdraw from the contract within the term specified in subsection (1) of this section. The right to withdraw from a contract for the provision of services expires if the supplier has commenced provision of the service before the expiry of the term for withdrawal with the consent or on the initiative of the consumer.

(3) If a consumer withdraws from a contract, the sums paid by the consumer shall be refunded to him or her immediately but not later than within thirty days as of the withdrawal from the contract. The provisions of §§ 188–194 of this Act apply to other consequences of withdrawal.

§ 57. Withdrawal from credit contract

(1) If goods or services are acquired on credit, the consumer may, in the case of withdrawal under the conditions provided for in § 56 of this Act, also withdraw from the credit contract if:

1) the credit for acquisition of the goods or consumption of the services was provided by the supplier;

2) the credit was provided by a third party on the basis of a prior agreement with the supplier;

3) the credit contract can be regarded as economically uniform with a distance contract for reasons other than those specified in clauses 1) and 2) of this subsection, particularly if a third party used the assistance of the supplier in the preparation of or entry into the contract.

(2) In the case provided for in subsection (1) of this section, the consumer shall not be required to pay interest or expenses. The provisions of §§ 188–194 of this Act apply to other consequences of withdrawal.

(3) If credit is provided by a third party and the amount of the credit has already been paid to the supplier, the rights and obligations of the supplier with regard to the consumer transfer to the creditor in the case of withdrawal by the consumer.

§ 58. Withdrawal from contract for provision of financial services

In the case of withdrawal from a contract for the provision of financial services, particularly investment, banking, insurance and securities transactions and services, the consumer may be required to compensate for the price of the financial services actually provided by the supplier if the price was predetermined by the supplier before entry into the contract. If the

price was not predetermined by the supplier before entry into the contract, the consumer may be required to pay such part of the price of the financial services which were the object of the contract which corresponds to the period of time between entry into the contract and withdrawal from the contract.

§ 59. Performance of contract

(1) Unless the parties have agreed otherwise, the supplier shall execute an order of the consumer not later than within thirty days as of communication of the order.

(2) If a supplier is unable to execute an order, the supplier shall give corresponding notice to the consumer and shall refund all amounts paid by the consumer immediately but not later than within thirty days.

(3) In lieu of the goods or services ordered, the supplier may provide the consumer with goods or services of at least equivalent quality and price if this possibility was agreed on by the parties beforehand. In the case of withdrawal by the consumer, the costs relating to the return of the goods shall be borne by the supplier.

§ 60. Restrictions on use of means of communication

An offer may be communicated to the consumer by facsimile, telephone answering machine or electronic mail only with the prior consent of the consumer. Other means of communication which allow individual communication may be used for communicating an order only if the consumer has not expressly forbidden the use thereof.

§ 61. Prohibition to violate provisions

A person or body provided by law may, pursuant to the procedure provided by law, require a supplier who has violated the provisions of this Division to terminate such violation and refrain from future violation.

§ 62. Mandatory nature of provisions

Agreements which derogate from the provisions of this Division to the detriment of the consumer are void.

Division 5

(11.02.2004 entered into force 15.04.2004 - RT I 2004, 13, 86)

Contracts Entered into through Computer Network

(11.02.2004 entered into force 15.04.2004 - RT I 2004, 13, 86)

§ 62[1]. Specifications for entry into contract through computer network

(1) A person engaging in economic or professional activities who enters into contracts through a computer network when selling goods or providing services shall make available to customers suitable and efficient technical means which are accessible and by which customers are able to identify and correct typing errors before transmitting their orders.

(2) Before transmission of an order specified in subsection (1) of this section, the supplier shall notify the customer of:

1) the technical stages involved in entering into the contract;

2) whether the supplier will preserve the text of the contract after entry into the contract and whether the text will remain available to the customer;

3) the technical means for identifying and correcting typing errors;

4) the languages in which the contract may be entered into;

5) the rules observed by the supplier, and the electronic means for examining the rules.

(3) The supplier shall confirm receipt of an order immediately in electronic form.

(4) The order and the confirmation of receipt of the order are deemed to have been received when the person to whom the order or confirmation is addressed has had the opportunity to examine it.

(5) The terms of the contract, including the standard terms, shall be presented to the customer in a manner which enables them to be saved and reproduced.

(6) The provisions of subsections (1)–(3) of this section do not apply if the contract is entered into by electronic mail or any other similar personal means of communication.

(7) Agreements derogating from the provisions of subsections (1)–(5) of this section may be entered into only by persons engaging in economic or professional activities. Derogating agreements do not affect the validity of the contract entered into.

(8) The provisions of this section do not preclude or restrict any obligations of a supplier to provide customers with any other information prescribed by law.

(11.02.2004 entered into force 15.04.2004 - RT I 2004, 13, 86)

Chapter 3

Plurality of Persons in Obligations

Division 1

Plurality of Obligors

§ 63. Joint obligors

(1) If several persons are to perform a divisible obligation, they shall perform the obligation in equal shares. The law or a transaction may prescribe that several obligors shall perform an obligation in unequal shares.

(2) The provisions of subsection (1) of this section do not apply if several persons are to perform an obligation as solidary obligors.

§ 64. Collective obligors

If several persons are to perform the same obligation and they can perform such obligation only collectively, the obligee shall require them to perform the obligation collectively.

§ 65. Solidary obligors

(1) If several persons are to perform an obligation solidarily (solidary obligors), the obligee may require full or partial performance of the obligation from all the obligors collectively, from any one obligor or from some of the obligors separately.

(2) A solidary obligation arises if several persons are to perform an obligation with the same content and performance of the obligation may be required by the obligee only once, and in other cases provided by law or on the basis of a transaction.

(3) A solidary obligation also arises if an obligation is indivisible.

(4) If several persons undertake by a contract to perform an obligation collectively, it is presumed that they are solidary obligors.

§ 66. Waiver of claim

(1) If an obligee wholly or partially waives a claim against a solidary obligor, the other

solidary obligors are nevertheless required to perform the obligation in full.

(2) If an obligee reaches an agreement with a solidary obligor that the obligee will waive the obligee's claim against all of the solidary obligors, the other solidary obligors are also released from the obligation. A solidary obligor may, on behalf of the other solidary obligors, accept a proposal from the obligee that the obligee will waive the obligee's claim against all the solidary obligors free of charge.

(3) The provisions of subsections (1) and (2) of this section also apply if an obligee waives the obligee's claim against a solidary obligor before the solidary obligation arises.

§ 67. Defences of solidary obligors

(1) If any one solidary obligor has performed an obligation in full, the other solidary obligors are not liable for the performance of the obligation. The same applies in the case of substituted performance, deposit or set off. A solidary obligor may only set off the obligee's claim against the obligor's claim.

(2) Any solidary obligor may set up defences against the claim of the obligee which arise from the solidary obligation or from the obligor's own legal relationship with the obligee.

(3) If a solidary obligor does not set up a defence against a claim of the obligee which could have been set up by any of the solidary obligors, the solidary obligor does not have a right of recourse against the other solidary obligors to the extent by which the solidary obligation would have diminished as a result of such defence, unless the solidary obligor did not know and did not have to know of the circumstances underlying the defence.

§ 68. Applicability of circumstances with regard to solidary obligors

(1) A solidary obligor shall not be liable for non-performance of the solidary obligation by another solidary obligor.

(2) Consequences arising to one solidary obligor from a delay in acceptance by an obligee or from postponement of the due date for the performance of the obligation also apply to the other solidary obligors.

(3) Circumstances not specified by law which affect the liability of solidary obligors, in particular defences regarding limitation periods, apply only to the solidary obligor concerned unless otherwise dictated by the solidary obligation.

§ 69. Relations between solidary obligors

(1) In relations between themselves, solidary obligors are liable for the performance of

the obligation in equal shares unless otherwise provided by law, the contract or the nature of the obligation.

(2) If a solidary obligor has performed the solidary obligation, the claim of the obligee against the other obligors transfers to the solidary obligor (right of recourse of solidary obligor) except to the extent of the solidary obligor's own share of the obligation.

(3) In the case provided for in subsection 66 (1) of this Act, the other obligors have the right of recourse against the obligor who is released from the solidary obligation to the extent of the obligor's share of the obligation in relations between the solidary obligors. This does not apply if the obligee reduces the claim thereof to the extent of the share which the obligor with regard to whom the obligee waived the claim is to bear in relations between the solidary obligors.

(4) If a solidary obligation involves performance of acts other than payment of money, the solidary obligor who has performed the obligation may only claim compensation in money from the other solidary obligors.

(5) A solidary obligor may claim compensation for reasonable expenses made by the obligor upon performance of the obligation from the other solidary obligors according to their shares in the obligation. Compensation for expenses shall not be claimed if the expenses are exclusively related to the solidary obligor.

(6) If a solidary obligor fails to perform the share thereof in the obligation with regard to the solidary obligor who performed the obligation, the solidary obligor who performed the obligation and the other solidary obligors shall be liable for the performance of such share proportionally to their shares in the obligation. The claim against the solidary obligor who fails to perform the obligation transfers to the solidary obligor who performed the obligation and to the other obligors.

(7) The provisions of subsections (1)–(6) of this section apply correspondingly to relations between the persons who have secured performance of an obligation by an obligor with securities.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

§ 70. Limitation period for right of recourse by solidary obligor

(1) The limitation period for the right of recourse by a solidary obligor who has performed the solidary obligation expires at the time when the claim of the obligee against the solidary obligor against whom the right of recourse is exercised would expire.

(2) The limitation period for the right of recourse by a solidary obligor shall not expire earlier than six months as of the date on which the solidary obligor performed the obligation or the obligee filed an action with a court against the obligor for the performance of the obligation.

(3) The provisions of subsection (2) of this section do not apply if a solidary obligor performs the obligation after the limitation period for the claim against the obligor or the solidary

obligor against whom the obligor exercised the right of recourse has expired.

(4) Claims for compensation for reasonable expenses provided for in subsection 69 (5) of this Act and claims arising from *negotiorum gestio* or unjustified enrichment which can be filed in lieu of exercising the right of recourse shall expire together with the right of recourse.

Division 2

Plurality of Obligees

§ 71. Joint obligees

If a divisible obligation must be performed for the benefit of several obligees, each of the obligees has the right to require performance of the obligation for the benefit thereof in a share equal to the shares of the other obligees unless law or a transaction provides that the obligees may require performance of the obligation in unequal shares, for their collective benefit or solidarily.

§ 72. Collective obligees

(1) If, pursuant to law, a transaction or the nature of an obligation, several obligees may only require performance of the obligation for their collective benefit, the obligor has the right to perform the obligation only for the benefit of all the obligees collectively.

(2) If an indivisible obligation must be performed for the benefit of several obligees, each obligee may only require performance of the obligation for the benefit of all the obligees collectively unless the obligees are solidary obligees.

(3) Each collective obligee may require performance of the obligation, including the deposit or sale of the thing owed, only for the benefit of all the obligees collectively. Other circumstances which pertain to one collective obligee only do not apply with regard to the other collective obligees.

§ 73. Solidary obligees

(1) If, pursuant to law, a transaction or the nature of an obligation, the obligation must be performed for the benefit of several persons such that each of the persons may require full performance of the obligation, such persons are solidary obligees.

(2) An obligor may perform an obligation for the benefit of all or some of the solidary obligees, even if one of the solidary obligees has already filed an action to claim the performance of the obligation.

(3) Performance of an obligation for the benefit of one of the solidary obligees, including a set-off against a claim of a solidary obligee or deposit for the benefit of a solidary obligee, releases the obligor from performance of the obligation for the benefit of the other solidary obligees.

(4) An obligor shall only set up such defences against the claim of a solidary obligee which the obligor has against the solidary obligee concerned.

§ 74. Applicability of circumstances with regard to solidary obligees

(1) If one solidary obligee delays acceptance of the performance of an obligation, the other solidary obligees are also deemed to have delayed acceptance of the performance of the obligation.

(2) If a solidary obligee becomes an obligor with regard to the same obligation, the obligation terminates. Such solidary obligee shall nevertheless pay the shares of the other obligees thereto pursuant to the provisions of § 75 of this Act.

(3) If a solidary obligee waives the claim thereof or assigns the claim to another person, the rights of the other solidary obligees remain unaffected.

(4) Circumstances not specified in subsections (1)–(3) of this section apply only with regard to the solidary obligee concerned.

§ 75. Relations between solidary obligees

(1) A solidary obligee who accepts the performance of an obligation by an obligor shall pay the other solidary obligees their shares. The shares of solidary obligees shall be equal unless otherwise provided by law, a transaction or the nature of the obligation.

(2) The limitation period for a claim by the other solidary obligees against the solidary obligee who accepts performance of the obligation expires at the time when the claim of the solidary obligees against the obligor would have expired but not before six months as of the date on which the obligor performed the obligation.

Chapter 4

Performance of Obligation

§ 76. Performance of obligation

(1) An obligation shall be performed pursuant to the contract or to law.

(2) An obligation shall be performed pursuant to the principles of good faith and reasonableness, taking into account usages and practices.

(3) Performance of an obligation is deemed to be conforming if the obligation is performed at the right time, at the right place and in the right manner for the benefit of the person who is entitled to accept performance.

(4) If an obligee accepts that which is offered to the obligee as performance of the obligation, the performance is deemed to be full, that which is offered as performance is deemed to be that which was owed and the performance to be conforming.

§ 77. Quality of performance of obligation

(1) An obligor shall perform an obligation with the quality prescribed by the contract or by law. Where the quality of the performance of a contractual obligation is not determinable from the contract or from law, the party shall perform the obligation with a quality not less than average in the circumstances.

(2) If a thing with specific characteristics is owed for performance of an obligation and if things with the specific characteristics may be of different quality, the obligor shall perform the obligation with a quality not less than average.

(3) If a thing with specific characteristics is owed for performance of an obligation and the obligor has done all that is possible on the part of the obligor to perform the obligation, including acquiring the thing with such specific characteristics or separation of the thing from other things with the same specific characteristics, the thing acquired or separated is deemed to be the object of the obligation.

(4) If a person is required to deliver a specific thing, the person shall take reasonable care of the thing until delivery.

§ 78. Performance of obligation by third party

(1) Except where an obligor must, pursuant to law or a contract or due to the nature of an obligation, perform an obligation in person, a third party may perform the obligation in part or in full. If a third party performs an obligation, the obligor is released from the duty to perform.

(2) An obligee may refuse to accept performance of an obligation by a third party if the obligor objects to the performance of the obligation by a third party.

(3) If an obligor has objected to the performance of the obligation by a third party, the obligee shall not refuse to accept performance if the third party performs the obligation in order to avoid compulsory execution with regard to an object which belongs to the obligor but is in the lawful possession of the third party or for which the third party has some other right and if, in the case of compulsory execution, such possession or right would terminate.

(4) A third party who has performed an obligation may exercise the right of recourse or right to claim compensation for the expenses relating to the performance only if such right is determinable from law or the relationship between the obligor and the third party, including unjustified enrichment or *negotiorum gestio*.

§ 79. Performance of obligation for benefit of unentitled person

(1) If an obligation is performed for the benefit of a person other than the obligee or for the benefit of a person who is not entitled to accept performance in lieu of the obligee, the obligation is deemed to have been performed if the obligation is performed for the benefit of such other person with the consent of the person entitled to accept performance or if performance for the benefit of such person is later approved by the person entitled to accept performance. The obligation is also deemed to have been performed in the case specified in subsection 169 (1) of this Act.

(2) Upon performance of an obligation for the benefit of an obligee with restricted active legal capacity, the obligation is deemed to have been performed if the obligation is performed for the benefit of the obligee with the consent of his or her legal representative or if his or her legal representative approves of the performance. An obligor may perform an obligation for the benefit of the legal representative of an obligee with restricted active legal capacity if the representative has not granted consent to the performance of the obligation for the benefit of the obligee.

(3) If an obligation is performed for the benefit of an obligee who does not have the right to dispose of the claim thereof due to compulsory execution or bankruptcy, the obligation is deemed to have been performed if the person who has the right to dispose of the claim consents to or approves of the performance.

§ 80. Contract for benefit of third party

(1) A contract may prescribe or the nature of an obligation may indicate that the obligation is to be performed for the benefit of a third party in lieu of the obligee (contract for the benefit of a third party).

(2) A third party may require performance of a contract if so prescribed by the contract or determined from law.

(3) If a life insurance contract or life annuity contract prescribes payment of life annuity to or performance of the obligations of an insurer for the benefit of a third party, the third party may require performance of the contract unless otherwise provided by the contract. The same applies to gratuitous contracts if the contract prescribes performance of an obligation by the donee for the benefit of a third party.

(4) A third party for whose benefit a contract is entered into need not be personally identifiable at the time of entry into the contract.

(5) If an obligor must perform an obligation for the benefit of a third party after the death

of the obligee, the third party may require performance of the obligation as of the death of the obligee unless the contract or the nature of the obligation indicates that the obligation must be performed later.

(6) The parties may amend or terminate a contract entered into for the benefit of a third party without the consent of the third party unless otherwise provided by law or the contract.

(7) An obligor may set up the same defences against a third party as against the obligee.

(8) If a third party waives a right granted thereto by a contract or if the right expires or is no longer in force, it is presumed that the obligee may designate another third party for the benefit of whom the obligation must be performed or that the obligee may require performance of the obligation for the obligee's own benefit.

(9) If a third party waives a right granted thereto by a contract, it is deemed that the third party has not had such right. A waiver is valid if a declaration of intent to that effect reaches both parties to the contract.

§ 81. Contract with protective effect for third party

(1) A contract may prescribe the obligation to take into account the interests or rights of a third party to the same extent as the interests or rights of the obligee. Such obligation shall be presumed if:

1) in the course of performance of the contract, the interests and rights of the third party are at risk to the same extent as the interests and rights of the obligee, and

2) the intent of the obligee to protect the interests and rights of the third party can be presumed, and

3) the third party and the intent of the obligee to protect the interests and rights of the third party are identifiable by the obligor.

(2) In the case of non-performance of the obligation specified in subsection (1) of this section, the third party may claim compensation for damage caused thereto.

§ 82. Time of performance of obligation and time when obligation falls due

(1) If the due date for the performance of an obligation is set by or determinable from the nature of the obligation, the obligation shall be performed on such date.

(2) If the term for the performance of an obligation is prescribed by or determinable from the contract, the obligation shall be performed during such term unless the contract or the circumstances indicate that the obligee may determine the due date for performance of the obligation.

(3) If the time for the performance of an obligation is not set and is not determinable from the nature of the obligation, the obligor shall perform the obligation within a reasonable period of time after the entry into the contract or after an obligation has arisen on some other basis, taking into particular account the place, manner and nature of the performance of the obligation.

(4) An obligor shall perform the entire obligation at one time if such performance can be rendered at one time and the contract or the nature of the obligation does not indicate otherwise.

(5) The parties shall perform their mutual contractual obligations simultaneously if such performance can be rendered simultaneously and the contract or the nature of the obligation does not indicate otherwise. If one party is obliged to perform certain acts during a certain period of time and the other party may perform its obligation at one time, such other party shall perform the obligation thereof after the first party has performed the obligation thereof unless otherwise provided by the contract.

(6) An obligor may perform an obligation arising from a contract entered into for the purposes of the economic or professional activities of the obligee during regular working hours and the performance shall be accepted during regular working hours, unless otherwise provided by the contract.

(7) An obligation falls due at the time when the obligee is entitled to require performance of the obligation. Unless otherwise provided by the contract, the obligee may require performance of an obligation upon expiry of the due date or term prescribed for the performance of the obligation. If the time for performance of the obligation is not set and is not determinable from the nature of the obligation, the obligee may require performance of the obligation after a reasonable period of time specified in subsection (3) of this section which is necessary for the performance of the obligation.

§ 83. Performance of obligation in parts

(1) If an obligation must be performed at one time, the obligee may refuse to accept performance of the obligation in parts unless this is contrary to the principle of good faith.

(2) An obligee may refuse to accept performance of an obligation in parts regardless of whether the obligor, upon making the proposal to perform the obligation in parts, offers security for performance of the remaining part of the obligation or confirms performance of the obligation in full.

(3) Additional expenses arising for an obligee from acceptance of the performance of an obligation in parts shall be borne by the obligor.

§ 84. Earlier performance of obligation

(1) An obligee shall not require performance of an obligation before the due date for performance but shall not refuse to accept performance of the obligation before the due

date unless the obligee has a legitimate interest in such refusal.

(2) Acceptance by a party of performance of an obligation before the due date shall not affect the time for performance of the party's own obligation if such time has been set irrespective of the performance of the other party's obligations.

(3) Additional expenses arising for an obligee from performance of an obligation before the due date shall be borne by the obligor.

(4) If, before the due date for performance, an obligor performs an obligation which involves the duty to pay interest, the obligee may claim interest until the due date prescribed for performance of the obligation. If an obligation performed before the due date does not involve the duty to pay interest, the obligor shall not claim interest from the obligee for the period of time between the performance of the obligation and the due date prescribed for performance.

§ 85. Place of performance of obligation

(1) An obligor shall perform an obligation at the place determined by the contract or by law. If the place of performance of an obligation is not prescribed by the contract or by law, the obligation shall be performed at a place determined on the basis of the nature of the contract.

(2) If the place of performance of an obligation cannot be determined on the bases specified in subsection (1) of this section:

1) a monetary obligation shall be performed at the obligee's place of business which was most closely related to the obligation at the time when the obligation arose or, if no such place exists, at the residence or seat of the obligee;

2) an obligation to deliver a specific thing or a thing from a specific group of things shall be performed at the place where the thing or group of things was located at the time when the obligation arose;

3) an obligation to deliver a thing which must be produced or prepared after the contract is entered into shall be performed at the place where the thing is produced or prepared;

4) an obligation not specified in clauses 1)–3) of this subsection shall be performed at the obligor's place of business which was most closely related to the obligation at the time when the obligation arose or, if no such place exists, at the residence or seat of the obligor.

(3) If an obligation must be performed at the place of business, residence or seat of the obligee and the obligee changes the place of business, residence or seat thereof after the obligation has arisen, the obligee may require performance of the obligation at the new place of business, residence or seat on the condition that the obligee bears any related additional expenses and risks.

(4) If an obligation must be performed at the place of business, residence or seat of the

obligor and the obligor changes the place of business, residence or seat thereof after the obligation has arisen, the obligor may perform the obligation at the new place of business, residence or seat on the condition that the obligor bears any related additional expenses and risks.

(5) If several alternative places have been determined for the performance of an obligation, the obligor has the right to choose the place of performance unless law provides or the nature of the obligation indicates that such right rests with the obligee or a third party.

§ 86. Alternative obligations

(1) If an obligor is required to perform one of several obligations, the choice shall be made by the obligor unless law or the contract provides or the nature of the obligation indicates that such right rests with the obligee or a third party.

(2) An obligor or an obligee who has the right to choose shall make the choice by informing the other party of the choice. If a third party has the right to choose, the choice shall be made by informing both the obligor and the obligee. After a choice has been made, it is deemed that performance of the chosen obligation only was required from the outset.

§ 87. Transfer of right to choose in case of alternative obligation

(1) If, in the case of an alternative obligation, the right to choose belongs to the obligor or the obligee and the choice is not made during the time period agreed upon or, if no agreement exists, within a reasonable period of time before the obligation falls due, the right to choose transfers to the other party to the obligation.

(2) If the right to choose belongs to a third party and the third party fails to make the choice during the term specified in subsection (1) of this section, the right to choose transfers to the obligor.

§ 88. Performance discharging different obligations

(1) If an obligor is required to transfer money, or objects with specific characteristics, or to provide services of the same type to the obligee for the discharge of different obligations and if the money or objects transferred or the services provided do not suffice to discharge all the obligations, the obligor may specify the obligation for the discharge of which the money or objects are transferred or the services are provided.

(2) If the obligations of an obligor do not have equal security, the obligor shall not resolve to perform an obligation with more security.

(3) An obligor shall not resolve to perform an obligation the performance of which cannot yet be required by the obligee and with regard to which the obligee has a legitimate in-

terest in refusing early performance.

(4) If an obligor, before performance or during a reasonable period of time thereafter, does not specify the obligation discharged by the performance, the obligee may do so if:

1) the obligee informs the obligor of the choice within a reasonable period of time after the performance, and

2) performance of the obligation is lawful, and

3) the obligation has fallen due, and

4) the obligation has not been disputed.

(5) If, under the circumstances specified in subsection (4) of this section, an obligee has chosen which obligation is deemed to have been performed by the obligor but the obligor has objected to the choice without delay, the obligor may choose which obligation is deemed to have been discharged by the performance. In such case, the obligation specified by the obligor is deemed to have been performed.

(6) If neither the obligor nor the obligee has chosen which obligation the money, objects or services are deemed to have discharged, the performance is deemed to discharge:

1) firstly, the obligation which is the first to fall due;

2) secondly, the obligation for which the obligee has the least security;

3) thirdly, the obligation which is the most burdensome for the obligor;

4) fourthly, the obligation which arose first.

(7) If the obligation deemed to have been discharged cannot be specified on the basis of the provisions of subsection (6) of this section, the performance is deemed to discharge all the obligations in proportion.

(8) If an obligor is required to pay expenses and interest in addition to the principal monetary obligation, the performance is deemed to discharge first the expenses, then the interest due and finally the principal obligation.

(9) An obligor shall not specify an order different from the order provided for in subsection (8) of this section for the performance of obligations without the consent of the obligee.

§ 89. Substituted performance of obligation

(1) An obligor may substitute performance of an act necessary for the performance of an obligation with the performance of another act (substituted performance) only with the consent of the obligee, even if the value of the other act is the same as or greater than the value of the act necessary for the performance. If the obligee accepts the performance of

the other act as the performance of the obligation, the obligation is deemed to have been performed.

(2) Assumption by an obligor of a new obligation for the benefit of the obligee in order to satisfy the claim of the obligee is not deemed to be substituted performance unless otherwise provided by law or the contract. If the obligee accepts the performance of the new obligation, the initial obligation is also deemed to have been performed.

(3) In the case of substituted performance, the obligor shall be liable for the substituted performance on the same bases as if performance had not been substituted.

§ 90. Costs of performance of obligation

An obligor shall bear the costs of performance of the obligor's obligations.

§ 91. Manner of performance of monetary obligations

(1) A monetary obligation may be performed in cash. A monetary obligation may also be performed in some other form if so agreed by the parties or if such form is used in the ordinary course of business at the place of payment.

(2) If an obligee has a settlement account in a credit institution in the state in which a monetary obligation is to be performed, the obligor may perform the obligation by transferring the amount due to the account unless the obligee has expressly prohibited this option.

(3) In the case of performance of a monetary obligation by transferring the amount due to the account of the obligee, the obligation is deemed to have been performed when the account of the obligee is credited with the amount due.

(4) If an obligee accepts a cheque, bill of exchange or other similar means of payment as performance of a monetary obligation and the means of payment is later redeemed, the obligation is deemed to have been performed as of acceptance of the means of payment.

(5) If an obligee has accepted a means of payment specified in subsection (4) of this section as performance of a monetary obligation, the obligee may only require performance of the obligation in money if the means of payment is not redeemed.

(6) If an obligee has the right to withhold performance of the obligee's obligation until performance of a monetary obligation by the obligor and if the obligee has accepted a means of payment specified in subsection (4) of this section as performance of the monetary obligation, the obligee may withhold the performance of the obligee's obligation until the means of payment is redeemed.

(7) Upon performance of a monetary obligation by post, the obligation is deemed to have been performed as of payment of the money to the obligee.

§ 92. Payment of money at nominal value

A monetary obligation shall be performed at the nominal value of the money unless otherwise provided by the law or the contract.

§ 93. Currency of monetary obligation

(1) The money paid to perform a monetary obligation shall be valid at the time of payment in the state in whose currency the payment is made.

(2) If a monetary obligation is not expressed in a particular currency, it shall be performed in the currency of the place of performance of the obligation (place of payment).

(3) If an obligation is expressed in a currency other than that of the place of payment, the obligor may also perform the obligation in the currency of the place of payment unless the currency is not freely convertible or the parties have agreed that payment in a currency other than that in which the monetary obligation is expressed is prohibited. Regardless of such agreement, the obligee may require performance of the monetary obligation in the currency of the place of payment if it is impossible for the obligor to make payment in the currency in which the monetary obligation is expressed.

(4) If a monetary obligation expressed in a currency other than that of the place of payment is performed in the currency of the place of payment, the obligation shall be converted into the currency of the place of payment on the basis of the average rate of exchange at which the obligee can, at the place of payment and at the time when the obligation falls due, immediately purchase the currency in which the obligation was expressed. If an obligor does not perform a monetary obligation in a timely manner, the obligee may require payment according to the applicable rate of exchange prevailing either at the time when payment is due or at the time of actual payment.

§ 94. Interest on obligations

(1) If interest is to be paid on an obligation pursuant to law or the contract, the interest rate shall be applied on a half-year basis and shall be equal to the last interest rate applicable to the main refinancing operations of the European Central Bank before 1 January or 1 July of each year, unless otherwise provided by the law or the contract.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(2) The Bank of Estonia shall organise timely publication of the interest rates specified in subsection (1) of this section in the official publication *Ametlikud Teadaanded*[2].

§ 95. Receipt for performance

(1) Upon accepting the performance of an obligation, an obligee shall issue written evidence of acceptance (receipt for performance) to the obligor at the request of the obligor. An obligor may also require issue of a receipt in some other form if the obligor has a legitimate interest therein.

(2) If a third party performs an obligation in lieu of an obligor, a receipt for the performance may be required by both the obligor and the third party.

(3) If an obligation is to be performed for the benefit of a third party, the obligor may require issue of a receipt for the performance from both the third party and the obligee.

(4) If a receipt for performance issued by an obligee is handed over to the obligor by a person other than the obligee, the person is deemed to be authorised to accept the performance of the obligation from the obligor. The person handing over the receipt is not deemed to be authorised to accept the performance of the obligation if the obligor knew or should have known that the person is not authorised to accept the performance or if the receipt has been removed from the obligee's possession against the obligee's will.

(5) If a receipt is issued for the performance of a principal obligation, the expenses and interest are also presumed to have been paid.

(6) If an obligee or a third party for the benefit of whom an obligation is to be performed refuses to issue a receipt, the obligor may withhold performance of the obligation until the obligor has obtained the receipt. In such case, the obligee is deemed to have delayed acceptance of the performance of the obligation.

§ 96. Return of debt instrument

(1) If an obligor issues a document certifying the existence of an obligation (debt instrument), the obligor may, upon performance of the obligation demand the return of the debt instrument in addition to or in lieu of a receipt. If the obligee does not return the debt instrument, the obligor may require written confirmation of the termination of the obligation from the obligee.

(2) If an obligation is performed in part or if a debt instrument also sets out other rights of the obligee or if the obligee has some other legitimate interest in not returning the debt instrument, the obligee may refuse to return the debt instrument on the condition that the obligee make an inscription certifying performance of the obligation on the debt instrument.

(3) If a debt instrument has been returned to the obligor, it is presumed that the obligation has been performed.

(4) If an obligee refuses to return a debt instrument or to make an inscription on a debt instrument or to issue confirmation of the termination of an obligation, the obligor may withhold performance of the obligation until the debt instrument is received, the inscription is made or the confirmation is issued. In such case, the obligee is deemed to have delayed acceptance of the performance of the obligation.

§ 97. Alteration of balance of contractual obligations

(1) If the circumstances under which a contract is entered into change after the entry into the contract and this results in a material change in the balance of the obligations of the parties due to which the costs of one party for the performance of an obligation increase significantly or the value of that which is to be received from the other party under the contract decreases significantly, the injured party may demand amendment of the contract from the other party in order to restore the original balance of the obligations.

(2) Amendment of a contract under the circumstances specified in subsection (1) of this section may be demanded if:

1) at the time of entry into the contract, the injured party could not have reasonably expected that the circumstances might change, and

2) the injured party could not influence the change in the circumstances, and

3) the risk of a change in the circumstances is not borne by the injured party pursuant to the law or the contract, and

4) the injured party would not have entered into the contract or would have entered into the contract under significantly different terms if the party had known of the change in the circumstances.

(3) Amendment of a contract may also be demanded if the circumstances under which the contract was entered into had already changed before the contract was entered into but became known to the injured party after the contract was entered into.

(4) The injured party may also demand amendment of the contract retroactively, but not as of a time earlier than the time when the balance of the obligations changed.

(5) If the bases for amendment of a contract exist but, due to the circumstances, amendment of the contract pursuant to subsection (1) of this section is not possible or would not be reasonable with respect to the other party, the party aggrieved by alteration of the balance of the obligations may withdraw from the contract or, in the case of a contract entered into for an indefinite period , cancel the contract pursuant to the procedure provided for in § 196 of this Act.

§ 98. Obligation to provide security and confirm performance of obligations

(1) If a person is required to provide security for the performance of an obligation but the type of the security is not exactly defined or if the provision of security is a condition for the creation of legal consequences, the person who provides security may choose the type of security. Security shall be sufficient to secure performance of the obligation and, if necessary, payment of interest and expenses, and the obligee shall be able to convert the security into money without difficulties.

(2) If security provided under the circumstances specified in subsection (1) of this section is no longer sufficient for reasons independent of the obligee, the obligor shall supplement or replace the security.

(3) If a person is required to confirm performance of an obligation but the method of confirmation has not been determined or confirmation of the performance of the obligation gives rise to certain legal consequences, the person shall provide sufficient evidence of the person's ability to perform the obligation.

§ 99. Provision of goods or services not ordered

(1) A person engaged in economic or professional activities shall not have the right of claim against a consumer to whom the person dispatches goods or provides services which the consumer did not order.

(2) The provisions of subsection (1) of this section shall not preclude the filing of claims arising from the law if:

1) the goods or services were not intended for the consumer;

2) the person who dispatched the goods or provided the services erroneously believed that the consumer ordered the goods or services and the consumer was or should have been aware of the error.

(3) The provisions of subsections (1) and (2) of this section do not apply if goods or services of a quality and price at least equal to that of the goods or services ordered are offered to the consumer in lieu of the goods or services ordered and if the consumer is notified that there is no obligation to accept the goods or services nor bear the expenses relating to their return.

Chapter 5

Non-performance

Division 1

General Provisions

§ 100. Definition of non-performance

Non-performance is failure to perform or defective performance of a prestation, including a delay in performance.

§ 101. Legal remedies in case of non-performance

(1) In the case of non-performance by an obligor, the obligee may:

1) require performance of the obligation;

2) withhold performance of an obligation which is due from the obligee;

3) demand compensation for damage;

4) withdraw from or cancel the contract;

5) reduce the price;

6) in the case of a delay in the performance of a monetary obligation, demand payment of a penalty for late payment.

(2) In the case of non-performance, the obligee may resort to any legal remedy separately or resort simultaneously to all legal remedies which arise from law or the contract and can be invoked simultaneously unless otherwise provided by law or the contract. In particular, invoking a legal remedy arising from non-performance shall not deprive the obligee of the right to demand compensation for damage caused by non-performance.

(3) An obligee shall not rely on non-performance by an obligor nor resort to legal remedies arising therefrom insofar as such non-performance was caused by an act of the obligee or by circumstances dependent on the obligee or by an event the risk of which is borne by the obligee.

§ 102. Notification obligation

An obligor shall notify the obligee of an impediment to performance by the obligor and of the effect of such impediment on the performance of the obligation immediately after the obligor becomes aware of the impediment.

§ 103. Excused non-performance

(1) An obligor shall be liable for non-performance unless the non-performance is excused. It is presumed that non-performance is not excused.

(2) Non-performance by an obligor is excused if it is caused by *force majeure*. *Force majeure* are circumstances which are beyond the control of the obligor and which, at the time the contract was entered into or the noncontractual obligation arose, the obligor could not reasonably have been expected to take into account, avoid or overcome the impediment or the consequences thereof which the obligor could not reasonably have been expected to

overcome.

(3) If the effect of *force majeure* is temporary, non-performance is excused only for the period during which *force majeure* impeded performance of the obligation.

(4) In the cases provided by law or the contract, a person shall be liable for non-performance regardless of whether the non-performance is excused.

§ 104. Liability in case of culpability

(1) In the cases provided by law or contract, a person shall be liable for non-performance only if the person is culpable of the non-performance.

(2) The types of culpability are carelessness, gross negligence and intent.

(3) Carelessness is failure to exercise necessary care.

(4) Gross negligence is failure to exercise necessary care to a material extent.

(5) Intent is the will to bring about an unlawful consequence upon the creation, performance or termination of an obligation.

(6) If, pursuant to law or a contract, a person is required only to exercise such care as the person would exercise in the person's own affairs, the person shall nevertheless also be liable in the case of intent and gross negligence.

§ 105. Legal remedies independent of liability of obligor

In the case of non-performance by an obligor, the obligee has the right to withhold performance of the obligation of the obligee, withdraw from or cancel the contract or reduce the price regardless of whether the obligor is liable for the non-performance. If the obligor and the obligee are engaged in economic or professional activities, the obligee may require payment of a penalty for late payment regardless of whether the obligor is liable for the non-performance.

§ 106. Agreement to release person from liability or to restrict liability

(1) An obligor and an obligee may agree in advance to preclude or restrict liability in the case of non-performance of an obligation.

(2) Agreements under which liability is precluded or restricted in the case of intentional non-performance or which allow the obligor to perform an obligation in a manner materially different from that which could be reasonably expected by the obligee or which unreasonably exclude or restrict liability in some other manner are void.

§ 107. Cure

(1) A party who fails to perform a contractual obligation may, at the party's own expense, cure the non-performance, including improving or replacing defective performance, as long as the other party has not withdrawn from or cancelled the contract or demanded compensation for damage in lieu of performance, provided that:

1) cure is reasonable in the circumstances, and

2) cure does not cause unreasonable inconvenience or expenses to the injured party, and

3) the injured party has no legitimate interest in refusing cure.

(2) A non-performing party may cure non-performance within a reasonable period of time after the party has given notice to the injured party of the intention to cure and of the proposed manner and timing of the cure and if the injured party with a legitimate interest in refusing cure has not given notice of such refusal within a reasonable period of time.

(3) The injured party may withhold performance as of receipt of the notice of cure until completion or failure of the cure. During the time for cure, the injured party may use other legal remedies only if these are not inconsistent with the cure.

(4) Cure shall not deprive the injured party of the right to claim compensation for damage caused by a delay in performance or by the cure, including the right to claim payment of a penalty for late payment or a contractual penalty.

Division 2

Legal Remedies

§ 108. Requiring performance of obligation

(1) In the case of non-performance by an obligor of an obligation to pay money, the obligee may require performance of the obligation.

(2) In the case of non-performance by an obligor of an obligation other than one to pay money, the obligee may require performance of the obligation. Performance of the obligation shall not be required if:

1) performance is impossible;

2) performance is unreasonably burdensome or expensive for the obligor;

3) the obligee may reasonably achieve the desired result of the performance in another manner;

4) performance involves provision of services of a personal nature.

(3) An obligee may require performance of an obligation specified in subsection (2) of this section only within a reasonable period of time after the obligee has or should have become aware of the non-performance.

(4) An obligor may determine beforehand a reasonable term within which the obligee may require performance. If the obligor determines an unreasonably short term within which the obligee may require performance, the term is deemed to have been extended to a reasonable length.

(5) If an obligee does not require performance during a term specified in subsection (3) or (4) of this section, the obligee may no longer require performance of the obligation but may resort to other legal remedies.

(6) The right to require performance of an obligation includes the right of the obligee to require repair, replacement or other cure of a defective performance in so far as this may be reasonably expected from the obligor.

(7) If, pursuant to subsection (2) of this section, an obligee does not have the right to require performance of an obligation from the obligor and the obligor receives compensation in lieu of the object of the obligation due or acquires the claim for payment of such compensation (claim for compensation), the obligee may require transfer of the compensation or assignment of the claim for compensation.

(8) An obligee shall not require performance of an obligation if, at the request thereof, the obligee has in lieu of performance received compensation for the damage incurred due to non-performance.

§ 109. Specifications concerning requirement to perform mutual contract

(1) In the case of a mutual contract, the non-performing party may require the other party to perform its obligations even if performance by the non-performing party cannot be required for reasons specified in subsection 108 (2) of this Act and if the reason arises due to circumstances dependent on the other party or if the reason arises at the time when the other party delays acceptance.

(2) In the case specified in subsection (1) of this section, the non-performing party shall nevertheless deduct from the party's claim whatever the party saves as a result of non-performance or obtains as a result of applying the party's labour or other resources elsewhere or fails to obtain in bad faith despite having a reasonable opportunity to do so.

§ 110. Withholding performance of obligation

(1) An obligor may withhold performance of an obligation until the obligee has satisfied a claim which is due for the benefit of the obligor against the obligee if the claim is not sufficiently secured and there is a sufficient link between the claim and the obligation of the obligor and unless indicated otherwise by law, the contract or the nature of the obligation. A sufficient link exists between a claim and an obligation primarily if the obligations of the obligor and the obligee arise from the same legal relationship, a prior regular relationship between the obligor and the obligee or from another sufficient economic or temporal relationship.

(2) An obligor does not have the right to withhold performance on the bases specified in subsection (1) of this section if:

1) satisfaction of the obligor's claim against the obligee is impossible;

2) the obligee has failed to perform due to circumstances dependent on the obligor, including where performance has been impeded by a delay in acceptance by the obligor;

3) the claim of the obligee arises from the obligation of the obligor to provide maintenance to the obligee;

4) the claim of the obligee against the obligor arises from the obligation to compensate for damage resulting from health damage or from damage caused by death;

5) pursuant to law, the claim cannot be subject to a claim for payment.

(3) The right of an obligor to withhold performance terminates when the obligee performs or secures the performance of the obligee's obligation.

(4) If the claim of an obligor against the obligee has expired, the obligor may withhold performance if the right to withhold performance arose before the expiry of the limitation period.

§ 111. Withholding performance in case of mutual contract

(1) If the parties have mutual obligations arising from a contract (mutual contract), a party may withhold performance until the other party has performed, offered to perform, secured or confirmed the performance.

(2) If an obligation is to be performed for the benefit of several persons, the obligated party may, in the case specified in subsection (1) of this section, withhold performance for the benefit of all such persons until the obligation due for the benefit of the obligated party has been performed in full.

(3) A party shall not withhold performance if this would be unreasonable in the circumstances or contrary to the principle of good faith, in particular if the other party has performed the obligations thereof for the most part or without significant deficiencies.

(4) A party required to perform an obligation before performance by the other party may withhold performance of the contract if circumstances which become evident to the party af-

ter the entry into the contract give sufficient reason to believe that the other party will not be able to perform the obligation thereof due to insolvency, or if the other party's conduct in preparing for performance or during performance or any other good reason gives reason to believe that the party will not perform the obligation thereof.

(5) In the case specified in subsection (4) of this section, the party entitled to withhold performance may require the other party to perform the obligation thereof at the same time as the first party and may set a reasonable term for the performance of the obligation, for confirmation of the performance or for the provision of security. If the other party fails to perform or to secure or confirm performance of the obligation during the term, the party entitled to withhold performance may withdraw from the contract pursuant to the provisions of § 117 of this Act.

(6) If a party who is to perform before performance by the other party has sufficient reason to believe that the other party's performance will be partial or in any other manner defective, the first party may withhold performance on the bases provided for in subsection (4) of this section only if it can be presumed that there will be a fundamental breach of the contract by the other party.

§ 112. Reduction of price

(1) If a party accepts defective performance, the party may reduce the price payable by the party by the proportion of the ratio of the value of defective performance to the value of conforming performance. The values of conforming and defective performances shall be determined as at the time of performance of the obligation. If the values of conforming and defective performances cannot be precisely determined, a court shall decide the values taking into account the circumstances.

(2) In order to reduce a price, a corresponding declaration shall be made to the other party. If several persons participate in a contract as one party, the price may be reduced only jointly by all persons acting as one party and with regard to all persons. If the right to reduce the price terminates for one entitled person, it shall also terminate for the other persons acting as one party with the entitled person.

(3) A party which is entitled to reduce the price but has already paid a sum exceeding the reduced price may, in the case of a price reduction, claim a refund of the sum paid in excess pursuant to the provisions of subsections 189 (1) and 191 (1) of this Act.

(4) A price may also be reduced before the obligation of the other party falls due under the same conditions as provided for in § 117 of this Act for withdrawal from a contract before an obligation falls due.

(5) A party shall not reduce the price to the extent to which the other party cured the non-performance of the other party's obligation.

§ 113. Penalty for late payment

(1) Upon a delay in the performance of a monetary obligation, the obligee may require the obligor to pay interest on the delay (penalty for late payment) for the period as of the time the obligation falls due until conforming performance is rendered. The interest rate specified in § 94 of this Act plus seven per cent per year shall be the rate of penalty for late payment. If a contract prescribes payment of interest exceeding the rate provided for in § 94 of this Act, the interest rate prescribed by the contract plus seven per cent per year shall be the rate of penalty for late payment.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(2) If compensation for damage is required for reasons other than non-performance of an obligation to pay money, the penalty for late payment on the sum of the compensation shall be calculated as of the moment when the person required to compensate for the damage became or should have become aware of the damage caused.

(3) If a person is to be compensated for expenses incurred by the person, payment of a penalty for late payment on such expenses may be required as of the time the expenses were incurred. If expenses are related to a thing to be delivered to a person who is required to compensate for such expenses, the person is not required to pay a penalty for late payment for the time for which the person entitled to receive compensation retains the fruits of the thing or other benefit arising therefrom.

(4) An obligor is not required to pay a penalty for late payment for the time the obligor is unable to perform the obligation thereof due to a delay in acceptance by the obligee or for the time the obligor legitimately withholds performance of the obligation.

(5) If the damage caused by a delay in performance exceeds the fine for the delay, compensation for the sum which exceeds the penalty for late payment may be claimed if a claim for compensation for damage exists.

(6) A penalty for late payment shall not be required for a delay in the payment of interest. Agreements which derogate from such requirement to the detriment of the obligor are void.

(7) The provisions of subsection (6) of this section shall not preclude or restrict the right of the obligee to claim compensation for damage caused by a delay in the payment of interest.

(8) A person required to pay a penalty for late payment may claim for a reduction of the fine pursuant to the provisions of § 162 of this Act.

§ 114. Additional term for performance

(1) In the case of non-performance of an obligation by an obligor, the obligee may grant a reasonable additional term for the obligor to perform the obligation. If the obligee requires performance of an obligation but does not grant an additional term therefor, a reasonable additional term shall be presumed to have been granted. If the obligee grants an unreasonably short additional term for performance, the term shall be extended to a reasonable length.

(2) The grant of an additional term shall not release the obligor from liability for non-performance.

(3) If an additional term is granted in the case of non-performance of a contractual obligation, the obligee may withhold performance of the obligations thereof during the term, claim compensation for damage caused by the non-performance and claim payment of a penalty for late payment but shall not resort to any other legal remedies.

(4) If an obligor gives notice that the obligor will not perform an obligation or if the obligor fails to render a conforming performance during an additional term, the obligee may, after receipt of such notice or upon expiry of the term, resort to other legal remedies, including claiming compensation for damage in lieu of performance, withdrawing from the contract or cancelling the contract.

§ 115. Compensation for damage

(1) In the case of non-performance of an obligation by an obligor, the obligee may together with or in lieu of performance claim compensation for damage caused by the non-performance from the obligor except in cases where the obligor is not liable for the non-performance or the damage is not subject to compensation for any other reason provided by law.

(2) Compensation for damage in lieu of performance may be required upon the expiry of the additional term provided for in § 114 of this Act. If performance of an obligation involves return of a particular object, compensation for damage in lieu of performance may be required only if the obligee has lost interest in the return of the object due to the delay.

(3) Compensation for damage in lieu of performance may also be required without granting an additional term if it is evident that the grant of the additional term would not have any effect or, in the cases specified in clauses 116 (2) 1)–4) of this Act or under the circumstances, if immediate compensation for the damage is reasonable for any other reason.

(4) If an obligor performs an obligation in part, the obligee may claim compensation for damage in lieu of full performance only if the obligee does not have a reasonable interest in partial performance. In such case, that which was delivered as partial performance shall be returned pursuant to the provisions of §§ 189–191 of this Act.

(5) (Repealed - 19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

§ 116. Withdrawal and cancellation as legal remedies

(1) A party may withdraw from the contract in the case of fundamental non-performance of a contractual obligation by the other party (fundamental breach of contract).

(2) A breach of contract is fundamental if:

1) non-performance of an obligation substantially deprives the injured party of what the party was entitled to expect under the contract, except in cases where the other party did not foresee such consequences of the non-performance and a reasonable person of the same kind as the other party could not have foreseen such consequences under the same circumstances;

2) pursuant to the contract, strict compliance with the obligation which has not been performed is the precondition for the other party's continued interest in the performance of the contract;

3) non-performance of an obligation was intentional or due to gross negligence;

4) non-performance of an obligation gives the injured party reasonable reason to believe that the party cannot rely on the other party's future performance;

5) the other party fails to perform any obligation thereof during an additional term for performance specified in § 114 of this Act or gives notice that the party will not perform the obligation during such term.

(3) If contractual obligations are to be performed in parts and fundamental breach of contract is committed only with regard to one obligation or some obligations or one part or some parts thereof, the injured party may withdraw from the contract only with regard to such obligation or part of an obligation. In such case, the injured party may withdraw from the entire contract only if the party is justifiably not interested in partial performance or if the non-performance is fundamental with regard to the contract as a whole.

(4) Withdrawal from a contract without granting an additional term for performance specified in § 114 of this Act is prohibited if the damage suffered by the non-performing party in the case of the withdrawal would be disproportionate in relation to the expenses incurred in the performance or preparation for the performance of the obligation. However, withdrawal from a contract without granting an additional term is permitted in the case of non-performance of an obligation specified in clause (2) 2) of this section or if the other party gives notice that the party will not perform the obligation thereof.

(5) Upon granting an additional term specified in § 114 of this Act, the injured party may prescribe withdrawal from the contract on the occasion where the other party fails to perform the other party's obligation during the additional term. The injured party shall not withdraw from the contract in such manner if the obligation which the non-performing party fails to perform during the additional term is only a minor part of the non-performing party's contractual obligations.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(6) In the case of a fundamental breach of a contract entered into for an indefinite period , the injured party may cancel the contract pursuant to the provisions of § 196 of this Act.

§ 117. Withdrawal before obligation falls due

(1) If it is evident before the obligation of a party falls due that such party will commit a fundamental breach of the contract, primarily if the party gives notice that the party does not intend to perform the contract, the other party may withdraw from the contract before the obligation falls due.

(2) A party which intends to withdraw from the contract before an obligation falls due shall give notice of such intention to the other party in order to give the other party an opportunity to secure or confirm the performance of the obligation. The party which intends to withdraw may withhold performance of the obligations thereof until security or confirmation is received. If the performance is not secured or confirmed during a reasonable period after notice of the intention to withdraw is given, the party which gave notice of the intention thereof may withdraw from the contract.

(3) Notice to the other party of an intention to withdraw from a contract need not be given if the other party has given notice that the party will not perform the obligation thereof.

§ 118. Prohibition on withdrawal

(1) A party entitled to withdraw from a contract loses the right to withdraw if the party does not a make a declaration of withdrawal within a reasonable period of time after:

1) the party becomes or should have become aware of a fundamental breach of the contract;

2) the additional term for performance granted pursuant to § 114 of this Act expires.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(2) Withdrawal from a contract due to a breach of the contract is void if the claim for the performance of the obligation has expired and the obligor relies on such claim or if the obligor legitimately refuses to perform the obligation.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

Chapter 6

Impediments to Performance of Obligation

§ 119. Definition and consequences of delay in acceptance

(1) Acceptance by an obligee is delayed if the obligor cannot perform the obligation thereof due to circumstances dependent on the obligee, in particular if the obligee unjustifiably refuses to accept a conforming performance actually offered to the obligee or to perform an obligation which is the precondition for performance by the obligor or to perform any

other act necessary for performance by the obligor or to co-operate with the obligor.

(2) In the case of a delay in acceptance by an obligee, the obligor shall be liable for non-performance of the obligation thereof only if the obligor causes such non-performance intentionally or due to gross negligence.

§ 120. Deposit of money, securities, other documents and valuables

(1) If an obligee delays acceptance or if the obligor does not know and does not have to know the identity of the obligee, the obligor may deposit the money, securities, other documents or valuables owed with a notary for the purposes of transfer to the obligee. The procedure for depositing shall be established by the Minister of Justice.

(2) An obligor may deposit money, securities, other documents or valuables owed at the place of performance of the obligation. If the obligor deposits such objects at another place, the obligor shall compensate the obligee for any expenses and damage arising therefrom.

(3) An obligor shall give immediate notice of a deposit to the obligee or the person presenting himself or herself as the obligee.

(4) If an obligor and an obligee are required to perform their obligations simultaneously, the obligor may make the transfer of deposited property to the obligee conditional on the performance of the obligation of the obligee.

(5) The person with whom property is deposited may refuse to transfer the deposited property to the obligee if the obligee does not pay all of the person's expenses relating to the deposit. After the deposited property has been transferred, the person with whom the property was deposited shall refund the sums paid by the obligor for depositing regardless of whether the obligee has paid the expenses relating to the deposit. If an obligor reclaims the deposited property, the obligor shall bear the expenses relating to the deposit.

§ 121. Reclamation of deposited property

(1) An obligor may reclaim deposited property from the depositary only if, upon depositing the property, the obligor notifies the depositary of the intention to retain the right to reclaim the property (right of reclamation of deposited property).

(2) The right of reclamation of deposited property extinguishes if:

1) the obligor gives notice to the depositary that the obligor waives the right to reclaim the property;

2) the obligee gives notice to the depositary that the obligee will accept the deposited property;

3) a court judgment which has entered into force and which recognises the right of the

obligee to the deposited property is presented to the depositary;

4) a court declares the bankruptcy of the obligor.

(3) A right of reclamation of deposited property shall not be subject to a claim nor seized.

(4) If an obligor reclaims deposited property, the property is deemed not to have been deposited and the claim against the obligor is restored together with all rights arising from accessory obligations.

§ 122. Legal consequences of deposit

(1) If property is deposited without the obligor having the right of reclamation, it is deemed that by depositing the property the obligor has performed the obligation at the time of the deposit. If the obligor has retained the right to reclaim the deposited property, the obligation is deemed to have been performed upon expiry of the right of reclamation.

(2) If property is deposited with the right of reclamation, the obligor may set up a defence against an obligee's claim concerning performance of the obligation, indicating that the obligor has deposited the money, securities, documents or valuables owed under the obligation. In such case, the obligee shall not require performance of the obligation in any other manner than out of the deposited property.

(3) During the period for which property is deposited with the right of reclamation, the risk of accidental loss of or damage to the property shall be borne by the obligee. The obligor is not required to pay interest for the period of the deposit nor compensate the obligee for loss of profit incurred during such period.

(4) The right of an obligee to receive deposited property extinguishes when seven years have passed from receipt of the notice of the deposit if, within that term, the obligee fails to give notice to the depositary of the intention to accept the deposited property. If the term has expired and the obligee has not given notice of the intention to accept the deposited property, the obligor may reclaim the deposited property even if the obligor has not retained the right of reclamation.

(5) The claim of an obligee against an obligor expires upon expiry of the term specified in subsection (4) of this section unless the claim has expired earlier.

§ 123. Declaration for receipt of deposited property

If a declaration from an obligor certifying the right of the obligee to receive deposited property is necessary for the receipt of the property, the obligee may require the obligor to issue the declaration under the same conditions as the obligee could require performance of the obligation if the property were not deposited. If an action filed by the obligee is satisfied, the obligor is deemed to have granted consent upon the entry into force of the judgment.

§ 124. Depositing other things

(1) In the case specified in subsection 120 (1) of this Act, an obligor may deposit movables other than money, securities, other documents or valuables with a reasonably chosen third party whose economic activities include the deposit of movables of the corresponding type, unless such deposits involve unreasonably high costs.

(2) The provisions of subsections 120 (2)–(5) and §§ 121–123 of this Act apply as appropriate upon depositing movables specified in subsection (1) of this section.

§ 125. Sale of moveable owed

(1) In the case specified in subsection 120 (1) of this Act and in the case where a movable cannot be transferred to the obligee for reasons independent of the obligor, the obligor may, instead of depositing the movable, sell the movable in a reasonable manner if:

1) the movable cannot be deposited due to its nature or because there is no reasonable opportunity to deposit the thing;

2) the movable is highly perishable;

3) the preservation or storage of the movable would involve unreasonable costs;

4) the period of deposit may be of unpredictable length because the obligor does not know and does not have to know the identity of the obligee.

(2) A movable may be sold at the place of performance of the obligation. If a reasonable result cannot be expected at the place of performance, the movable may be sold in another place suitable therefor.

(3) An obligor shall sell a movable if sale is clearly in the interests of the obligee or if the obligee gives notice that the obligee requires the movable to be sold.

(4) A movable shall be sold by auction. If the movable is highly perishable or has a current exchange or market price or if the price which could be expected at an auction would be unreasonably low in comparison to the costs of the auction, the obligor may sell the movable in some other reasonable manner.

(5) Within a reasonable period before the intended sale of a movable, the obligor shall give notice to the obligee of the intention to sell the movable. Notice need not be given if the movable is highly perishable or if notification is impossible.

(6) An obligee shall bear the reasonable costs of the sale of a movable and the costs shall be deducted from the money received from the sale of the movable. The remainder of the money shall be paid to the obligee by the obligor.

(7) Upon the sale of a movable, the obligee shall retain the rights arising from defective performance.

§ 126. Performance by third party

The provisions of this Chapter concerning the rights and obligations of obligors apply also to third parties who perform an obligation in order to avoid compulsory execution with regard to an object belonging to the obligor which is in the lawful possession of the third party or with regard to which the third party has some other right and such right or possession would terminate in the case of compulsory execution.

Chapter 7

Compensation for Damage

§ 127. Purpose and extent of compensation for damage

(1) The purpose of compensation for damage is to place the aggrieved person in a situation as near as possible to that in which the person would have been if the circumstances which are the basis for the compensation obligation had not occurred.

(2) Damage shall not be compensated for to the extent that prevention of damage was not the purpose of the obligation or provision due to the non-performance of which the compensation obligation arose.

(3) A non-conforming party shall only compensate for such damage which the party foresaw or should have foreseen as a possible consequence of non-performance at the time of entering into the contract unless the damage is caused intentionally or due to gross negligence.

(4) A person shall compensate for damage only if the circumstances on which the liability of the person is based and the damage caused are related in such a manner that the damage is a consequence of the circumstances (causation).

(5) Any gain received by the injured party as a result of the damage caused, particularly the costs avoided by the injured party, shall be deducted from the compensation for the damage unless deduction is contrary to the purpose of the compensation.

(6) If damage is established but the exact extent of the damage cannot be established, including in the event of non-patrimonial damage or future damage, the amount of compensation shall be determined by the court.

(7) If future damage is established but the extent of the damage cannot be established, the court may determine the amount of the compensation later.

§ 128. Types of damage subject to compensation

(1) Damage subject to compensation may be patrimonial or non-patrimonial.

(2) Patrimonial damage includes, primarily, direct patrimonial damage and loss of profit.

(3) Direct patrimonial damage includes, primarily, the value of the lost or destroyed property or the decrease in the value of property due to deterioration even if such decrease occurs in the future, and reasonable expenses which have been incurred or will be incurred in the future due to the damage, including reasonable expenses relating to prevention or reduction of damage and receipt of compensation, including expenses relating to establishment of the damage and submission of claims relating to compensation for the damage.

(4) Loss of profit is loss of the gain which a person would have been likely to receive in the circumstances, in particular as a result of the preparations made by the person, if the circumstances on which compensation for damage is based would not have occurred. Loss of profit may also include the loss of an opportunity to receive gain.

(5) Non-patrimonial damage involves primarily the physical and emotional distress and suffering caused to the aggrieved person.

§ 129. Compensation for patrimonial damage upon causing death

(1) In the case of an obligation to compensate for the damage arising from the death of a person, the obligated person shall compensate for the expenses arising from the death of the deceased person, in particular for reasonable funeral expenses, reasonable medical expenses relating to the health damage or bodily injury which caused the death of the person, and the damage arising from the aggrieved person's interim incapacity for work.

(2) Compensation for funeral expenses shall be paid to the person who is obligated to bear the expenses. If funeral expenses are borne by another person, compensation for the expenses shall be paid to the other person.

(3) If a person whose death is caused bears, at the time of his or her death, an obligation arising from law to maintain another person, the person obligated to compensate for the damage shall pay the person reasonable monetary compensation corresponding to the maintenance payments which the deceased person would have paid to the person during the deceased person's presumed life-span.

(4) A person obligated to compensate for damage shall also pay compensation to a third party on the basis and to the extent specified in subsection (3) of this section if the obligation to maintain such person would have arisen pursuant to law in the future and during the presumed life-span of the deceased.

(5) A person obligated to compensate for damage shall also bear the obligation provided for in subsections (3) and (4) of this section with regard to a person who, by the time

of the death of the deceased person, had been conceived but not yet born.

(6) If a person whose death is caused maintained, on a continuous basis up to the death of the person, another person with whom the deceased lived together as a family or whom the deceased person maintained on the basis of a moral obligation, the person obligated to compensate for the damage shall pay compensation to the person to the extent specified in subsection (3) of this section if:

1) the person needs maintenance, and

2) the person cannot receive maintenance in any other manner, and

3) the person whose death was caused would presumably have continued to maintain the person in the future.

(7) A person obligated to compensate for damage may set up the same defences against claims for compensation for damage by persons specified in subsections (2)–(6) of this section as the person could have set up against the person whose death the obligated person caused.

§ 130. Compensation for damage in case of health damage or bodily injury

(1) In the case of an obligation to compensate for damage arising from health damage or bodily injury caused to a person, the obligated person shall compensate the aggrieved person for expenses arising from such damage or injury, including expenses arising from the increased needs of the aggrieved person, and damage arising from total or partial incapacity to work, including damage arising from a decrease in income or deterioration of the future economic potential of the aggrieved person.

(2) In the case of an obligation to compensate for damage arising from a bodily injury or health damage caused to a person, the obligated person shall pay the aggrieved person a reasonable amount of money as compensation for non-patrimonial damage caused to the person by such damage or injury.

§ 131. Compensation for patrimonial damage in case of deprivation of liberty or violation of personality rights

In the case of an obligation to compensate for damage caused by unlawfully depriving a person of liberty, by defamation or by violation of any other personality right, the obligated person shall compensate the aggrieved person for the expenses caused to the person and for damage arising from a decrease in income or deterioration of the future economic potential of the aggrieved person.

§ 132. Compensation for damage in case of destruction, loss of and or damage to thing

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(1) In the case of an obligation to compensate for damage arising from destruction or loss of a thing, compensation shall be paid in an amount covering the reasonable expenses made to acquire a new thing of equal value. If by the time of the destruction or loss of a thing the value of the thing has considerably decreased in comparison to the value of an equivalent new thing, the decrease shall be taken into account in a reasonable manner when determining the amount of compensation for the damage.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(2) If acquisition of a new thing of equal value is not possible, the value of the thing which was destroyed or lost shall be compensated for.

(3) If damage is caused to a thing, compensation for the damage shall cover, in particular, the reasonable costs of repairing the thing and the potential decrease in the value of the thing. If repairing the thing is unreasonably expensive in comparison to the value of the thing, compensation shall be paid pursuant to subsection (1) of this section.

(4) If a thing damaged was necessary or useful for the aggrieved person, in particular, for the person's economic or professional activities or work, compensation for the damage shall also cover the costs of using a thing of equal value during the time in which the damaged thing is being repaired or a new thing is being acquired. If the person does not use a thing of equal value, the person may claim compensation for loss of the advantages of use which the person could have benefited from during the time in which the thing is repaired or a new thing is being acquired.

§ 133. Compensation for damage caused by environmentally hazardous activities

(1) If damage is caused by environmentally hazardous activities, damage related to a deterioration in environmental quality shall also be compensated for in addition to the damage caused to persons or the property thereof. Expenses relating to preventing an increase in the damage and to applying reasonable measures for mitigating the consequences of the damage, and the damage arising from the application of such measures shall also be compensated for.

(2) Damage and expenses specified in subsection (1) of this section shall be compensated for to the extent and pursuant to the procedure provided by law.

§ 134. Specifications for compensation for non-patrimonial damage

(1) Compensation for non-patrimonial damage arising from non-performance of a contractual obligation may only be claimed if the purpose of the obligation was to pursue a non-patrimonial interest and, under the circumstances relating to entry into the contract or to the non-performance, the obligor was aware or should have been aware that non-performance could cause non-patrimonial damage.

(2) In the case of an obligation to compensate for damage arising from deprivation of liberty or violation of a personality right, in particular from defamation, the obligated person shall compensate the aggrieved person for non-patrimonial damage only if this is justified by the gravity of the violation, in particular by physical or emotional distress.

(3) In the case of an obligation to compensate for damage arising from the death of a person or a serious bodily injury or health damage caused to the person, the persons close to the deceased or the aggrieved person may also claim compensation for non-patrimonial damage if payment of such compensation is justified by exceptional circumstances.

(4) In the case of destruction or loss of a thing, the aggrieved person has, taking into account exceptional circumstances, the right to claim a reasonable amount of money as compensation for non-patrimonial damage in addition to compensation for patrimonial damage regardless of the usefulness of the thing if the person had a special interest in the destroyed or lost thing primarily for personal reasons.

§ 135. Offsetting price differences

(1) If, after withdrawing from a contract, an injured party performs a transaction within a reasonable time and in a reasonable manner with which the injured party achieves the same purpose which was to be achieved by the contract from which the party withdrew (substitute transaction), the injured party may claim for the non-conforming party to offset the difference between the contractual price and the price arising from the substitute transaction as compensation for damage.

(2) If an injured party withdraws from a contract, the party may claim for the difference between the contractual price and the current market price of the contractual obligation of the non-conforming party at the time of withdrawal from the contract to be offset as compensation for damage if there is a market price for the object of the contractual obligation at the place of performance or at any other place which appears reasonable to take as a reference, even if the injured party does not perform a substitute transaction.

(3) The provisions of subsections (1) and (2) of this section shall not preclude or restrict the right to make a claim for compensation for damage exceeding the price difference.

§ 136. Manner of compensation for damage

(1) Damage shall be compensated for in a lump sum unless the nature of the damage makes it reasonable to pay the compensation in instalments.

(2) In the event that death, a bodily injury or health damage is caused, the damage shall be compensated for in money and in instalments unless the nature of the damage makes it reasonable for the compensation to be paid as a lump sum.

(3) If damage is to be compensated for in instalments, payments shall be made in advance for each three month period unless otherwise decided by a court taking into account the circumstances. If the person entitled to receive compensation dies before the end of the

period for which an instalment is or should have been paid, the obligation to pay compensation for such period remains in effect.

(4) If a court orders an obligor to pay compensation in instalments, the court may alter the period and amount of the instalments on the application of either party if, after the judgment is made, circumstances become evident which are relevant to the determination of the period and amount of the instalments and the occurrence of which was not taken into account in the determination of the instalments.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(5) In the cases provided by law or a contract and in other cases where this is reasonable under the circumstances, the aggrieved person may claim compensation for damage in a manner other than monetary compensation.

§ 137. Compensation for damage paid by several persons

(1) If several persons are liable, on the same or different grounds, to a third party for the same damage caused to the third party, they shall be solidarily liable for payment of compensation.

(2) In relations between the persons specified in subsection (1) of this section, liability shall be divided taking into account all circumstances, in particular the gravity of the non-performance or the unlawful character of other conduct and the degree of risk borne by each person.

(3) If one of the persons obligated to compensate for damage has the right to set up defences which would preclude or restrict the person's liability to the person requiring the compensation, the claim for compensation against other obligors shall be reduced to the extent of the share of the obligation which the person entitled to set up the defences bears in relations between the persons obligated to compensate for the damage.

§ 138. Common liability for damage

(1) If several persons may be liable for damage caused and it has been established that any of the persons could have caused the damage, compensation for the damage may be claimed from all such persons.

(2) A person obligated to compensate for damage shall be released from liability if the person proves that the damage was not caused thereby.

(3) In the case specified in subsection (1) of this section, compensation for damage may be claimed from each person to an extent in proportion to the probability that the damage was caused by the person concerned.

§ 139. Damage due in part to aggrieved person

(1) If damage is caused in part by circumstances dependent on the injured party or due to a risk borne by the injured party, the amount of compensation for the damage shall be reduced to the extent that such circumstances or risk contributed to the damage.

(2) The provisions of subsection (1) of this section also apply if the aggrieved person failed to draw the attention of the person causing the damage to an unusually high risk of damage or to prevent the risk of damage or to perform any act which would have reduced the damage caused if the aggrieved person could have reasonably been expected to do so.

(3) In the event that the death of a person or damage to the health of a person is caused, the compensation for damage may be reduced on the grounds specified in subsection (1) of this section only if the aggrieved person contributed to the damage intentionally or through gross negligence.

(4) The restriction on reducing compensation for damage provided for in subsection (3) of this section shall not be applied to the extent that the injured party is compensated for the damage by an insurer.

§ 140. Limits on compensation for damage

(1) The court may reduce the amount of compensation for damage if compensation in full would be grossly unfair with regard to the obligated person or not reasonably acceptable for any other reason. In such case, all circumstances, in particular the nature of the liability, relationships between the persons and their economic situations, including insurance coverage, shall be taken into account.

(2) Limits on the extent of the liability of a person who causes damage, or a fixed amount of compensation for damage may be provided by law.

Chapter 8

Accessory Obligations

§ 141. Accessory obligations

Accessory obligations are, primarily:

1) obligations arising from a suretyship or from granting a guarantee;

2) obligations arising from payment of earnest money;

3) obligations arising from an agreement on a contractual penalty.

Division 1

Suretyship and Grant of Guarantee

§ 142. Definition of suretyship

(1) Under a contract of suretyship, the surety undertakes to be liable to the obligee of a third party (principal obligor) for the performance of the principal obligor's obligation.

(2) A conditional obligation may also be secured with a suretyship. A future obligation may be secured with a suretyship only if the obligation is sufficiently defined.

(3) Suretyship may be of a limited term or amount or related to another condition.

(4) The validity of a suretyship shall not depend on the relationship between the principal obligor and the surety.

(5) If a suretyship applies to an obligation against which defences regarding limitation periods may be set up or which may be annulled due to an error of the principal obligor or which is based on a transaction which is invalid due to the restricted active legal capacity of the principal obligor, and if the surety is aware of such circumstances at the time the contract is entered into, the surety shall be liable for the performance of the obligation under the same conditions as in the case of granting a guarantee.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(6) Agreements derogating from the provisions of this Chapter to the detriment of a surety shall be void unless otherwise provided by law.

§ 143. Contract of consumer surety

(1) A contract of consumer surety is a contract of suretyship where the surety is a consumer.

(2) A contract of consumer surety is void if the maximum amount of money covered by the liability of the surety is not agreed upon.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

§ 144. Entry into and format of contract of suretyship

(1) An obligee is presumed to consent to a contract of suretyship being entered into.

(2) In the case of a contract of consumer surety, the application of the surety by which the surety undertakes to assume the obligations arising from the suretyship shall be made in writing.

(3) A contract of suretyship is valid even upon non-compliance with formal requirements arising from law or a transaction if the surety performs the obligation of the principal obligor arising from the contract.

§ 145. Liability of surety

(1) In the case of non-performance, the principal obligor and the surety shall be solidarily liable to the obligee unless the contract of suretyship prescribes that the surety is liable only if the claim of the obligee against the principal obligor cannot be satisfied.

(2) A surety shall be liable for the obligation secured by the suretyship in full. The surety shall also be liable for the consequences arising from non-performance, in particular for payment of fines for delay, contractual penalties and compensation for damage, and for compensation for expenses relating to withdrawal from or cancellation of the contract. The surety shall be liable for payment of compensation for costs relating to the collection of the debt from the principal obligor if the surety had been notified of the intention to collect on time and therefore the surety could have avoided the costs.

(3) If a suretyship pertains to an obligation other than the payment of money, the suretyship is deemed to pertain to the obligation to pay compensation for damage in the case of non-performance of the obligation. In other aspects, the provisions of subsection (2) of this section apply.

(4) Transactions concluded by a principal obligor after a contract of suretyship is entered into shall not extend the liability of the surety.

(5) If the activities of an obligee reduce other security which exists at the time a contract of suretyship is entered into and which is given to secure the claim to which the suretyship applies, the liability of the surety shall be reduced by the amount corresponding to the reduction in security unless the obligee proves that the damage incurred by the surety is smaller.

§ 146. Notification obligation of obligee

(1) At the request of a surety, the obligee shall provide the surety with information concerning performance of the obligation of the principal obligor.

(2) In the event of the bankruptcy of a principal obligor, the obligee shall file the claim thereof in a bankruptcy proceeding pursuant to the procedure prescribed in the Bankruptcy Act (RT 1992, 31, 403; RT I 1997, 18, 302, 1998, 2, 46; 36/37, 552; 1999, 10, 155; 2000, 13, 93; 54, 353; 2001, 56, 336). Upon receiving notification of a bankruptcy proceeding, the obligee shall immediately inform the surety of the proceeding.

(3) If an obligee fails to perform the obligations specified in subsections (1) and (2) of this section, the claim of the obligee against the surety shall be reduced by the amount of damage caused to the surety by such non-performance.

§ 147. Notice of performance of obligation

(1) If a surety performs an obligation of the principal obligor in part or in full, the surety shall notify the principal obligor of the performance.

(2) If a surety fails to notify the principal obligor of the performance of an obligation and the principal obligor performs the same obligation, the surety shall not have a right of recourse against the principal obligor if the principal obligor did not know and did not have to know that the surety has performed the obligation. This shall not preclude nor restrict the right of the surety to make a claim arising from unjustified enrichment against the obligee.

§ 148. Right of surety to require security or performance

(1) A surety may require the principal obligor to provide security or, once the obligation has fallen due, to perform the obligation for the benefit of the obligee if:

1) the principal obligor changes the place of business, residence or seat thereof and this renders the filing of a claim for payment against the obligor more complicated;

2) the risk borne by the surety has increased significantly due to deterioration of the principal obligor's economic situation, a decrease in the value of an item given as security, or an intentional act or gross negligence on the part of the principal obligor;

3) the principal obligor fails to perform an obligation arising from a contract entered into with the surety;

4) the principal obligor fails to perform the obligation thereof in due time.

(2) A surety may also require the principal obligor to perform an obligation for the benefit of the obligee also if the court has made a judgment by which an action of the obligee against the surety is satisfied.

§ 149. Defences by surety

(1) A surety may set up all such defences against a claim of the obligee which could have been set up by the principal obligor, except defences which are directly related to the person of the principal obligor. The surety has the right to set up such defences even if the principal obligor waived the defences.

(2) A defence which a principal obligor may set up against a claim secured by surety-

ship shall not be set up by the surety if the purpose of the contract of suretyship is also to provide security to the obligee for the occasion that a defence is set up by the principal obligee. In such case, the surety shall not, above all, set up a defence concerning the limited liability of a successor or a defence concerning termination or reduction of the obligation of the principal obligor in the case of liquidation or bankruptcy proceedings of the obligor or termination of a civil law partnership without legal succession.

(3) A surety may withhold satisfaction of a claim of the obligee until the end of the term during which the principal obligor may annul the transaction on which the principal obligor's obligation is based or withdraw from the contract. The surety shall retain such right even if the principal obligor may set off the claim arising from the transaction on which the principal obligor's obligation is based.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(4) (Repealed - 19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(5) If an obligation subject to suretyship is secured by a right of security established with regard to the property of the principal obligor or if the obligee may exercise a right of security arising from law with regard to the property of the principal obligor, the surety may, until the principal obligor is declared bankrupt, require the obligee to satisfy the claim thereof out of the pledged property to the extent of the pledge.

(6) If a surety establishes a right of security in order to secure performance of an obligation of the principal obligor, the surety may require suspension of the compulsory execution initiated against the surety until the pledged object is sold.

§ 150. Co-sureties

If one and the same obligation is secured by several persons (co-sureties), such persons shall be solidarily liable to the obligee even if they do not undertake the suretyship together.

§ 151. Performance of obligation by surety

(1) If a surety performs an obligation in lieu of the principal obligor before the obligation has fallen due, the surety shall not make the claims arising from the suretyship against the principal obligor before the due date for the performance of the obligation of the principal obligor.

(2) Once the obligation of a principal obligor has fallen due, the surety may perform the obligation in lieu of the principal obligor at any time.

§ 152. Surety's right of recourse against principal obligor

(1) If a surety performs an obligation of the principal obligor, the claim of the obligee against the principal obligor transfers to the surety to the extent that the claim is satisfied. Against such claim, the principal obligor may set up all such defences which the principal obligor had against the obligee as well as defences arising from the legal relationship between the principal obligor and the surety. The provisions of § 70 of this Act apply *mutatis mutandis* to the limitation period for the right of recourse of the surety.

(2) If a surety performs an obligation without setting up the defences which the principal obligor had against the obligee, the claim of the obligee shall not transfer to the surety to the extent that the liability of the surety would have been reduced as a result of such defences unless the surety proves that the surety was not and did not have to be aware of such defences.

§ 153. Termination of suretyship

(1) A suretyship terminates:

1) upon termination of the obligation secured by the suretyship;

2) upon a transfer of the obligation unless the surety consents to be liable for the new obligor;

3) in the case of a suretyship for a specified term, upon the expiry of the term.

(2) In the case of a contract of consumer surety, the consent specified in clause (1) 2) of this section shall be granted in writing.

(3) Upon termination of a suretyship for a specified term, it is presumed that the liability of the surety extends to the obligations which arose before the expiry of the term.

(4) If a situation arises where the principal obligor and the surety are one and the same person, the obligee shall retain the security and other rights arising from the suretyship.

§ 154. Specifications for termination of contract of consumer surety

(1) A contract of consumer surety entered into for an unspecified term in order to secure a future obligation may be cancelled by the surety at any time. If such contract is entered into for a specified term, the contract may be cancelled after five years have passed from the contract being entered into.

(2) Upon cancellation of a contract of consumer surety, the suretyship remains in force with regard to obligations which arose before the cancellation.

§ 155. Provision of guarantee

(1) A person engaged in an economic or professional activity (guarantor) may, by a contract, assume an obligation (guarantee) before an obligee, according to which the person undertakes to perform obligations arising from the guarantee on the demand of the obligee.

(1^1) It is presumed that the obligee consents to the guarantee.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(2) The obligation of a guarantor before the obligee which arises from the guarantee shall not be affected by the obligation of the obligor secured by the guarantee nor the validity of the obligation even if the guarantee contains a reference to the obligation.

(3) A guarantor may only set up such defences against the obligee which arise from the guarantee.

(4) The obligation of a guarantor arising from the guarantee terminates:

1) when the guarantor has paid the obligee the amount of money for the payment of which the guarantor was obligated pursuant to the guarantee;

2) upon expiry of the term for which the guarantee is provided;

3) if the obligee waives the rights arising from the guarantee, including cases where the obligee returns the document on which the guarantee was based to the guarantor.

(5) If a guarantor performs an obligation arising from the guarantee, the guarantor shall have a right of recourse against the obligor only if such right arises from the relationship between the guarantor and the obligor.

Division 2

Earnest Money

§ 156. Definition of earnest money

(1) Earnest money is a sum of money given by one party to a contract to the other party to certify the that the contract has been entered into and to secure the performance thereof.

(2) Upon performance of a contract secured with earnest money, it is presumed that the earnest money will be used towards performance of the obligation or, if performance is impossible, that the earnest money will be refunded.

§ 157. Consequences of non-performance of contract secured with earnest money

(1) If the non-performance of a contract secured with earnest money is the fault of the party which gave the earnest money, the other party shall retain the earnest money. If the party which receives the earnest money requires compensation for the damage incurred by the party due to non-performance of the contract, the earnest money shall be used towards such compensation.

(2) If a contract secured with earnest money is not performed for a reason other than the fault of the party which gave the earnest money, the party may require the earnest money to be refunded.

Division 3

Contractual Penalty

§ 158. Definition of contractual penalty

(1) A contractual penalty is an obligation which is prescribed in the contract and under which the party which fails to perform the contract undertakes to pay an amount of money determined by the contract to the injured party.

(2) The provisions concerning contractual penalties also apply to acts which a non-performing party must perform in the interests of the injured party.

(3) The provisions of this Division apply *mutatis mutandis* in cases where the parties have agreed in advance on the amount of the damage to be compensated for by the non-performing party.

§ 159. Contractual penalty and claim for performance of obligation

(1) If a contractual penalty is agreed upon for the occasion of non-performance of an obligation, the injured party may claim performance of the obligation in addition to payment of the contractual penalty. Performance of the obligation in addition to payment of a contractual penalty shall not be claimed if the contractual penalty was agreed upon as a substituted performance and not as a measure for achieving performance.

(2) An injured party loses the right to claim payment of a contractual penalty if the party fails to notify the other party during a reasonable period after becoming aware of the non-performance that the party is claiming payment of the contractual penalty.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

§ 160. Contractual penalty in case of excused non-performance

If non-performance of an obligation is excused, payment of a contractual penalty shall not be claimed unless otherwise prescribed by the contract.

§ 161. Contractual penalty and damage

(1) In the case of non-performance of a contract, the injured party may claim payment of a contractual penalty regardless of the actual damage.

(2) If an injured party has the right to claim compensation for damage incurred due to non-performance of the contract, compensation shall be paid to the extent not covered by the contractual penalty.

§ 162. Reduction of contractual penalty

(1) If a contractual penalty to be paid is unreasonably high, the court may reduce the penalty to a reasonable amount at the request of the party obligated to pay the penalty, taking into particular account the extent to which the obligation has been performed by the party, the legitimate interests of the other party and the economic situation of the parties.

(2) Agreements which derogate from the provisions of subsection (1) of this section to the detriment of the party obligated to pay a contractual penalty are void.

(3) A party obligated to pay a contractual penalty does not have the right to require a reduction of the penalty after the party has paid the penalty.

§ 163. Contractual penalty if contract is void

If a contract is void, agreements concerning the payment of contractual penalties are also void.

Chapter 9

Transfer of Claims and Obligations

Division 1

Transfer of Claims

§ 164. Assignment of claim

(1) An obligee may transfer the claim thereof to another person on the basis of a contract in part or in full regardless of the consent of the obligor (assignment of claim). A claim shall not be assigned if assignment is prohibited by law or if the obligation cannot be performed for the benefit of any other person but the original obligee without altering the content of the obligation.

(2) Upon assignment of a claim, the new obligee assumes the position of the original obligee.

(3) If an obligee assigns one and the same claim more than once, the earliest assignment is deemed to be valid.

§ 165. Assignment of contingent claims and future claims

Future claims and contingent claims may also be assigned if they are sufficiently defined at the time of the assignment.

§ 166. Restrictions on assignment

(1) Claims for maintenance, claims for compensation for damage arising from a bodily injury, health damage or the death of a person and any other claims which cannot be subject to a claim pursuant to law shall not be assigned. Such claims may be assigned if counter-performance of equal economic value is received in exchange for the assignment.

(2) Agreements concluded between an obligor and an obligee whereby assignment of the claim is precluded or the right to assign the claim is restricted have no effect against third parties.

(3) The provisions of subsection (2) of this section shall not preclude or restrict the liability arising from agreements entered into between the original obligee and the obligor for violation of the prohibition to preclude or restrict the right to assign the claim. The person to whom the claim is assigned shall not be liable for violation of such agreement.

§ 167. Transfer of security and other rights

(1) Security given to secure a claim and rights arising from accessory obligations which are related to the claim, including pre-emptive rights for the occasion of bankruptcy or compulsory execution, which are not inseparably bound to the person assigning the claim and which are transferable shall transfer to the new obligee upon assignment of the claim. The obligation of the person assigning the claim also to transfer the security and the rights arising from accessory obligations which are not related to the claim is presumed.

(2) Security and rights arising from accessory obligations are related to the claim if the security and the rights extinguish upon termination of the claim secured thereby. Security and rights arising from accessory obligations are not related to the claim if the security and the rights do not extinguish upon termination of the claim secured thereby.

(3) Upon assignment of a claim, the rights of the original obligee to interest and contractual penalties also transfer to the new obligee.

(4) Upon assignment of a claim, the right to exercise rights arising from execution documents existing with respect to the claim also transfers to the new obligee.

(5) If a claim is assigned in part, the original obligee shall retain the pre-emptive right before the new obligee to the satisfaction of the claim to the extent that the claim is not assigned to the new obligee and the pre-emptive right to rights and security arising from accessory obligations.

(6) Upon transfer of security and rights arising from accessory obligations, the original obligee shall do all that is necessary to enable the new obligee to exercise the rights arising from the security and accessory obligations, including handing over the pledged objects held by the original obligee to the new obligee. Upon transfer of a claim secured by a mortgage or by a registered security over a moveable, the obligee assigning the claim shall provide assistance in registering the transfer of the right of security.

(7) Upon assignment of a claim for which another claim is assigned or another right is transferred to the obligee as security, it is presumed that they shall be transferred to the new obligee.

(8) The provisions of this section shall not preclude or restrict the validity of agreements to preclude or restrict the transfer of security which are entered into between an obligee assigning a claim and an obligor or a person providing the security.

§ 168. Evidence of assignment of claim

(1) An obligee who assigns a claim shall hand over documents certifying the claim and rights arising from accessory obligations, including execution documents specified in subsection 167 (4) of this Act, to the new obligee and provide the obligee with information necessary for filing the claim. If the original obligee has further use for a document, the new obligee may, in lieu of the document, require a copy of or extract from the document or performance of other acts which would enable the new obligee to exercise the rights thereof.

(2) At the request of the new obligee, the original obligee shall provide the new obligee with a document certifying the assignment of the claim.

§ 169. Performance of obligation for benefit of original obligee

(1) If an obligor performs an obligation for the benefit of an obligee who has assigned

the claim and, at the time of performance of the obligation, the obligor is not and does not need to be aware of the assignment of the claim, the obligor is deemed to have performed the obligation for the benefit of the correct person.

(2) If an obligor performs a transaction or other act relating to the claim with the obligee after the obligee has assigned the claim but, at the time of performance of the transaction or other act, the obligor is not and does not need to be aware of the assignment of the claim, the transaction or other act is deemed to be valid.

(3) If a court judgment concerning a claim has entered into force in a court proceeding between the obligor and the original obligee, the judgment shall also apply to the new obligee unless the obligor was or should have been aware of the assignment of the claim upon initiation of the court proceeding.

§ 170. Notice of assignment

If an obligee notifies an obligor of assignment of the claim to a new obligee, the assignment is deemed to have occurred in respect of the obligor even if the claim was actually not assigned or the assignment is invalid. The same applies if the obligee has issued a document concerning assignment of the claim and the new obligee submits the document to the obligor.

§ 171. Defences of obligor against claim of new obligee and set-off against assigned claim

(1) In addition to defences which an obligor has against the claim of a new obligee, the obligor may set up all such defences which the obligor had against the original obligee at the time of assignment of the claim.

(2) An obligor shall not set up such defences against a new obligee which arise from non-performance of a contract which precluded or restricted the right of the obligee to assign the claim and the obligor shall not set off the claim on such basis.

(3) An obligor may also set off a claim against the original obligee against the claim of the new obligee unless:

1) the obligor has acquired the claim thereof from a third party and, at the time of acquiring the claim, the obligor knew or should have known that the claim against the obligor had been assigned;

2) the claim of the obligee falls due later than the assigned claim and after the obligor became or should have become aware of the assignment.

§ 172. Document certifying assignment

An obligor may withhold performance of an obligation to a new obligee if the original obligee fails to provide the obligor with a document certifying assignment of the claim unless the original obligee has given written notice to the obligor of the assignment of the claim.

§ 173. Transfer of claim on basis of law

(1) If a claim transfers from an obligee to another person (acquirer of claim) on the basis of law, the transfer of the claim shall be valid without a declaration of intent from the original obligee.

(2) The provisions concerning assignment of claims apply to the transfer of a claim on the basis of law.

(3) A claim transfers on the basis of law:

1) to a person whose assets are sold in an execution proceeding in order to satisfy a claim against an obligor;

2) to a person who performs an obligation because satisfaction of the claim against the obligor is secured with the assets of the person;

3) to a person who performs an obligation in order to avoid compulsory execution in the cases specified in subsection 78 (3) of this Act;

4) in other cases provided by law.

(4) In the cases provided for in clauses (3) 1)–3) of this section, the obligation to satisfy the claim shall not transfer to the extent that the obligation is borne by the acquirer of the claim in the legal relationship between the acquirer and the obligor.

(5) Upon transfer of a claim on the basis of law, the acquirer of the claim acquires the right to the interest and contractual penalties agreed upon only to the extent that such interest or penalties have arisen after the transfer of the claim.

§ 174. Transfer of other rights

The provisions of this Division concerning transfer of claims apply *mutatis mutandis* to the transfer of other rights unless otherwise prescribed by law or the nature of the rights.

Division 2

Transfer of Obligations

§ 175. Assumption of obligation

(1) A third party may assume the obligation of an obligor on the basis of a contract entered into with the obligee whereby the third party assumes the position of the original obligor.

(2) A third party may also assume the obligation of an obligor on the basis of a contract entered into with the obligor, but the obligation transfers only on the condition that the obligee consents to such transfer.

(3) If an obligor has entered into a contract with a third party for the assumption of an obligation, the obligor or the third party may make a proposal to the obligee to give notice within the term set by the obligee as to whether the obligee consents to the transfer of the obligation. If the obligee does not grant consent within such term, the obligee is deemed to have refused to grant consent.

(4) If a third party assumes an obligation on the basis of a contract entered into with the obligor and the obligee has not yet granted consent or refuses such consent, the obligor is deemed to have the right to require timely satisfaction of the obligee's claim from the transferee of the obligation. If the obligee refuses to grant consent to the assumption of the obligation, the obligor may require the transferee of the obligation to secure performance of the contract on the basis of which the obligation is assumed.

(5) If an obligee has granted advance consent to the assumption of an obligation, the obligation is deemed to have been assumed by entry into the contract for the assumption of the obligation and notification of the obligee of the entry into the contract. An obligee shall not revoke advance consent unless the obligee has reserved the corresponding right upon granting the consent.

(6) If a person acquires an immovable and, by an agreement with the transferor, assumes the transferor's obligation secured by a mortgage over the immovable, the transferor shall give written notice of the assumption of the obligation to the obligee after the new owner has been entered in the land register. If the obligee does not refuse to grant consent to the assumption of the obligation within three months as of receipt of the notice, the obligee is deemed to have granted consent. After the obligee has granted or refused to grant consent to the assumption of the obligation, the transferor of the immovable shall notify the transferee of the grant or refusal to grant consent.

(7) (Repealed - 19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(8) If one and the same obligation transfers to several persons, the persons are presumed to be solidarily liable for the performance of the obligation.

§ 176. Defences of transferee of obligation

(1) In addition to the defences which the transferee of an obligation has against the obligee, the transferee may set up such defences against the claim of the obligee which arise from the legal relationship between the obligee and the original obligor, except the defences which the original obligor personally has against the obligee. Also, the transferee shall not

set off the claim of the original obligor against the claim of the obligee.

(2) The transferee of an obligation shall not set up such defences against the claim of the obligee which the transferee has against the original obligor pursuant to the legal relationship on which the assumption of the obligation is based.

(3) If an obligation is assumed with the consent of the obligee on the basis of a contract entered into with the obligor, the transferee of the obligation may set up defences arising from the invalidity of the assumption of the obligation against the obligee only if the obligee was or should have been aware of the reason for such invalidity upon granting the consent.

§ 177. Accessory obligations and security upon assumption of obligation

(1) Upon assumption of an obligation, accessory obligations related to the claim shall transfer to the new obligor unless they are of a personal nature or inseparably bound to the person of the original obligor for any other reason. The obligation to pay the interest and contractual penalties agreed upon transfers to the new obligor even if these fall due after the assumption of the obligation.

(2) Upon assumption of an obligation, the security given for and related to the obligation shall terminate. If security given for the performance of the obligation is not related to the obligation, the security shall be returned to the person who provided the security pursuant to the agreement on the basis of which the security was provided.

(3) The provisions of subsection (2) of this section do not apply if the person who provided security consents to be liable for the performance of the obligation by the new obligor.

§ 178. Joining in obligation

(1) An obligation may also be assumed by a third party joining in the obligation as a new obligor in addition to the original obligor (joining in obligation).

(2) A third party may enter into an agreement joining in an obligation with the obligee or the obligor.

(3) If a person joins in an obligation in order to secure the claim of the obligee, the formalities provided for in § 144 of this Act apply *mutatis mutandis*.

(4) Joining in an obligation creates solidary obligation. If a person joins in an obligation in order to secure the claim of the obligee, the provisions of §§ 145, 149 and 152 of this Act also apply.

Division 3

Assumption of Contract

§ 179. Definition of assumption of contract

(1) A party to a contract may, with the consent of the other party, transfer the party's rights and obligations arising from the contract to a third party on the basis of a contract entered into with the third party unless otherwise provided by law.

(2) Upon assumption of a contract, all rights and obligations arising from the contract are deemed to have transferred to the transferee of the contract.

(3) The provisions of §§ 167, 168, 171, 176 and 177 of this Act apply *mutatis mutandis* to the assumption of contracts.

Division 4

Transfer of Enterprise

§ 180. Transfer of enterprise

(1) The transferor of an enterprise may undertake to transfer the enterprise to the transferee on the basis of a contract entered into with the transferee. An enterprise may also be transferred to a transferee pursuant to law.

(2) An enterprise comprises the things, rights and obligations relating to and in the service of the management of the enterprise, including contracts relating to the enterprise.

§ 181. Restrictions on application

The provisions of this Division do not apply to the transfer of an enterprise in the event of the merger, division or transformation of legal persons or if an enterprise is taken over pursuant to law, in particular in the case of compulsory execution or bankruptcy proceeding.

§ 182. Acquisition of enterprise

(1) Things belonging to an enterprise are transferred to the transferee pursuant to the provisions concerning the transfer of such things, the rights pursuant to the provisions concerning the transfer of such rights and contracts pursuant to the provisions concerning the transfer of such contracts. The transferor of an enterprise is required to transfer possession of things to the transferee and, in the case of property subject to registration, to ensure that

the corresponding entries are made in the registers.

(2) By taking over the things and rights belonging to an enterprise, the transferee takes over all of the transferor's obligations related to the enterprise, including obligations with regard to the employees of the enterprise which arise from employment contracts, unless otherwise provided by law. The consent of the obligee or the other party is not required for the assumption of an obligation or the transfer of the contract unless otherwise provided by law.

(3) Agreements derogating from the provisions of subsection (2) of this section have no effect against third parties. Such agreements apply to obligees who have consented to the agreements in a format which can be reproduced in writing.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(4) The transferee of an enterprise shall promptly notify the obligees of the acquisition of obligations and the transferor of the enterprise shall promptly notify obligors of the assignment of the claims to the transferee.

(5) The provisions of this section apply *mutatis mutandis* to the grant of the use of an enterprise.

§ 183. Liability of transferor of enterprise

(1) A transferor and the transferee shall be solidarily liable to the obligee for obligations which have arisen before the transfer of the enterprise and which, by the time of the transfer, have fallen due or will fall due within five years after the transfer. It is presumed that, in relations with the transferor, the transferee of the enterprise is the obligated person.

(2) Agreements derogating from the provisions of subsection (1) of this section have no effect against third parties, except to obligees who have consented to such agreements in a format which can be reproduced in writing.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) The limitation period for claims arising from obligations specified in subsection (1) of this section shall be five years as of the transfer of the enterprise unless a shorter limitation period applies to some of the claims.

(4) The provisions of this section apply *mutatis mutandis* to the grant of the use of an enterprise.

§ 184. Right to business name

(1) The right to use the existing business name of an enterprise subject to transfer transfers to the transferee unless this is contrary to law, the rights of a third party or an agreement between the parties. The fact that the activities of the transferee continue in a le-

gal form other than that of the transferor shall not hinder the transfer of the business name if the transferee adheres to the requirements for business names provided by law.

(2) If the transferor of an enterprise is a natural person, the right to use the existing business name transfers to the transferee with the written consent of the transferor of the enterprise.

§ 185. Transfer of part of enterprise

The provisions of this Division also apply to contracts under which a part of an enterprise which is an organisational whole (an installation) is transferred.

Chapter 10

Termination of Obligation

Division 1

General Provisions

§ 186. Bases for extinction of obligation

An obligation extinguishes:

1) upon a conforming performance;

2) upon a set-off;

3) upon merger;

4) by an agreement to terminate the obligation;

5) upon withdrawal from the contract;

6) upon cancellation of the contract;

7) upon the death of an obligor who is a natural person if the obligation cannot be performed without his or her personal participation;

8) upon the death of an obligee who is a natural person if the obligation is to be performed personally for the benefit of the obligee;

9) in other cases prescribed by the law or the contract.

§ 187. Termination of accessory obligations and security

(1) Upon termination of an obligation, the security and accessory obligations relating to the obligation also terminate unless otherwise provided by law.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) If the security provided to secure a claim is not related to the claim and the obligation terminates, the security shall be returned, pursuant to the agreement on the basis of which the security was provided, to the person who provided the security.

Division 2

Withdrawal from Contract

§ 188. Declaration of and consequences of withdrawal

(1) A party withdraws from a contract by submitting a declaration of withdrawal to the other party.

(2) If a party may withdraw from a contract pursuant to law or the contract, withdrawal from the contract shall release both parties from the performance of their contractual obligations. Withdrawal shall not affect the validity of rights and obligations which have arisen from the contract before the withdrawal.

(3) Withdrawal shall not affect agreements on the resolution of disputes arising from the contract or other contract terms concerning the rights and obligations of the parties after withdrawal from the contract.

§ 189. Return of and compensation for that which was delivered under contract

(1) In the event of withdrawal from a contract, each party may claim return of that which was delivered by the party under the contract and delivery of the fruits and other gain received if the party returns all property that has been delivered to the party. Obligations arising from withdrawal shall be performed by the parties simultaneously, and the provisions of § 111 of this Act apply *mutatis mutandis*. Interest shall be paid on money refunded as of the moment of receipt of the money.

(2) In lieu of return or delivery, a party shall compensate for the value of that which was received by the party if:

1) return or delivery is impossible due to the nature of that which was received, including in the case of the provision of a service or the use of a thing;

2) the party has consumed or transferred the object received, encumbered it with the right of a third party or processed it;

3) that which was received has been destroyed.

(3) If the price of that which was received is set in the contract, the price is deemed to be the value of that which was received for the purposes of subsection (2) of this section.

(4) If a thing subject to return or delivery has deteriorated and such deterioration is not the result of the regular use of the thing, the decrease in the value of the thing shall be compensated for.

(5) A party who, under the circumstances, should reasonably be able to foresee the possibility of withdrawal from the contract shall ensure that it is possible to return that which was received in the case of withdrawal from the contract.

§ 190. Preclusion of compensation

(1) A party is not required to compensate for the value of that which was received by the party in lieu of return or delivery thereof if:

1) the circumstances on which withdrawal is based become evident only upon processing the thing;

2) deterioration or destruction occurred due to circumstances dependent on the other party or due to circumstances the risk of which is borne by the other party, or if the damage would also have occurred if that which was received had been in the possession of the other party;

3) upon exercising the right of withdrawal arising from the law, that which was received has deteriorated or been destroyed although the party exercised such care as the party would exercise in the party's own affairs.

(2) In the case of unjustified enrichment of a party under the circumstances specified in subsection (1) of this section, the party shall return that which was received pursuant to the provisions concerning unjustified enrichment.

§ 191. Gains and expenses

(1) In the case of withdrawal by a party who does not receive fruits or other gain which the party could have received upon adherence to the requirements for regular management, the party shall compensate the other party for the value of such fruits or other gain. If the right of withdrawal arises from the law, the party entitled to withdrawal shall be liable only for

the exercise of such care in the receipt of fruits and gain as the party would exercise in the party's own affairs.

(2) If a party returns an object or compensates for the value of the object or if the obligation to compensate for the value of the object is precluded pursuant to clause 190 (1) 1) or 2) of this Act, the other party shall compensate the first party for the necessary expenses incurred with respect to the object. In the case of unjustified enrichment of the other party through other expenses incurred by the first party, the first party shall be compensated for such other expenses pursuant to the provisions concerning unjustified enrichment.

§ 192. Indivisibility of right of withdrawal

(1) If several persons participate in a contract as one party, the persons may only exercise the right of withdrawal collectively. If the right of withdrawal extinguishes for any one person entitled to withdrawal, the right shall also extinguish for all the other persons.

(2) If a party withdraws from a contract where several persons participate as the other party, the first party may exercise the right of withdrawal only with regard to all such persons collectively.

(3) In the case of a multilateral contract, a party may withdraw from the contract only if the other party or parties fail to perform an obligation assumed with regard to the first party.

§ 193. Set-off after fundamental breach of contract

Withdrawal from a contract due to a fundamental breach of the contract is void if the party with regard to whom the right of withdrawal is to be exercised may terminate the obligation by a set-off and gives notice of the set-off immediately after the other party has given notice of withdrawal from the contract.

§ 194. Specifications for withdrawal from consumer contracts

(1) If a consumer withdraws from a contract on the grounds specified in §§ 49, 56, 383, 409, 433 or 874 of this Act, the provisions of §§ 188–193 of this Act apply together with the specifications provided for in this section.

(2) A consumer may withdraw from a contract on the grounds specified in subsection (1) of this section without specifying the reason for withdrawal. Return of a thing by a consumer within the term prescribed for the return is also deemed to be withdrawal. Dispatch of the thing within the specified term is sufficient for adherence to the term.

(3) Contract terms which, in comparison to the provisions of this Act, impede the right of withdrawal from being exercised, in particular agreements pursuant to which withdrawal is bound to payment of earnest money or a contractual penalty, are void.

(4) In the case of withdrawal on the grounds specified in subsection (1) of this section, the expenses relating to the return of the thing or compensation for services and the related risks shall be borne by the other party to the contract unless otherwise provided by law. The parties may agree that the consumer will bear the regular expenses relating to the return of the thing to the extent of a sum corresponding to 10 euro, except in cases where the thing delivered or service provided is not that which was ordered.

(5) If a consumer is not notified of the right of withdrawal, the consumer shall, in the case of withdrawal, be liable only for any damage caused to the thing intentionally or through gross negligence.

(6) If a consumer withdraws from a contract the object of which is performance of an obligation other than the delivery of a thing, the consumer shall compensate for the value of that which was received until withdrawal from the contract. In such case, the decrease in the value of the thing resulting from its proper use shall not be taken into consideration.

(7) In the cases specified in subsections (4)–(6) of this section, the other party to the contract shall not make claims not specified in the same subsections against the consumer.

(8) The provisions of this section shall not preclude or restrict the use of legal remedies arising from a breach of contract.

(9) Agreements which derogate from the provisions of this section to the detriment of the consumer are void.

Division 3

Cancellation of Contract

§ 195. Ordinary cancellation of contract

(1) A party cancels a contract by making a declaration of cancellation to the other party.

(2) If a party may cancel the contract pursuant to law or the contract, cancellation of the contract shall release both parties from the performance of their contractual obligations. The rights and obligations which arise from the contract before cancellation remain valid.

(3) A contract for the performance of a continuing obligation or recurring obligations (contract entered into for an indefinite period) which is entered into for an unspecified term may be cancelled by either party by giving reasonable advance notice unless otherwise prescribed by law or the contract (ordinary cancellation).

(4) If several persons participate in a contract as one party, the persons may only exercise the right of cancellation collectively. If a party cancels a contract where several persons participate as the other party, the first party may cancel the contract only with regard to all such persons collectively.

(5) Upon cancellation of a contract, the parties are only required to return that which has been delivered in advance with respect to the time of cancellation of the contract. The provisions of §§ 189–191 of this Act apply *mutatis mutandis* to the return.

§ 196. Extraordinary cancellation of contract

(1) Either party to a contract entered into for an indefinite period may cancel the contract with good reason without giving advance notice, in particular if the party cancelling the contract cannot reasonably be expected to continue performing the contract until the due date agreed upon or until expiry of the term for advance notice taking into account all the circumstances and the mutual interests of the parties (extraordinary cancellation).

(2) If non-performance of a contractual obligation by the other party provides good reason for cancelling the contract, the contract may only be cancelled if the other party fails to render a conforming performance within the term granted therefor. Such term need not be granted in the cases provided for in clauses 116 (2) 2)–4) of this Act.

(3) A person entitled to cancel a contract may cancel the contract only during a reasonable period of time after the person becomes aware of the circumstances substantiating the cancellation.

(4) If a person entitled to cancel a contract is, due to the cancellation, no longer interested in the obligations which have already been performed, the person may also extend the cancellation to such obligations. The provisions of §§ 189–191 of this Act apply *mutatis mutandis* to the return of that which was delivered.

Division 4

Set-off

§ 197. Definition of set-off

(1) If two persons (parties to a set-off) are required to pay each other a sum of money or perform another obligation of the same type, either party (the party requesting set-off) may set off the claim thereof against the claim of the other party if the party requesting set-off has the right to perform the obligation thereof and to require performance from the other party.

(2) As a result of a set-off, the claims of the parties to the set-off extinguish as of the time they could be set off and to the extent that they overlap unless the parties agree otherwise. If interest has already been paid on one or both of the claims, the set-off shall have retroactive effect only for the last period for which interest was paid.

(3) Monetary claims expressed in different currencies may be set off at an exchange

rate calculated as at the date of the set-off at the place of business of the party requesting set-off or, in the absence of a place of business, at the location of the residence or seat of the party. Set-off is not permitted if the exchange rates have not freely developed in the market.

§ 198. Declaration of set-off

A claim is set off by making a declaration of set-off to the other party. A declaration which is made conditionally or by setting a term is void.

§ 199. Set-off in case of different places of performance

If claims with different places of performance are set off, the party requesting set-off shall compensate the other party for damage caused by the fact that due to the set-off the other party cannot accept performance at the place prescribed or perform the obligation thereof at the place prescribed.

§ 200. Restrictions on set-off

(1) The following claims shall not be set off:

1) claims for maintenance, claims for compensation for damage arising from health damage or the death of a person and claims arising from unlawful or intentional causing of damage which the other party has against the party requesting set-off;

2) claims of the other party which pursuant to law cannot be subject to a claim;

3) claims of the other party the set-off of which is prohibited by law.

(2) A party requesting set-off may also set off the claim thereof against the claim of the other party if the claim of the other party has expired, on the condition that the right to set off the claim arose before the expiry of the claim.

(3) A party requesting set-off shall not set off a seized claim against the party's claim against the other party if the party requesting set-off acquired the claim after the seizure or if the claim thereof fell due after the seizure and later than the seized claim.

(4) A party requesting set-off shall not set off a claim against which the other party may set up defences.

§ 201. Set-off in event of several claims

(1) If the parties to a set-off have several claims suitable for set-off, the party requesting set-off may determine the claims to be set off. If the claims to be set off are not specified in the declaration of set-off or if the other party immediately objects to the choice of the claims specified in the declaration, the following claims are deemed to be set off:

1) firstly, the obligation which is the first to fall due;

2) secondly, the obligation for which the obligee has the least security;

3) thirdly, the obligation which is the most burdensome for the obligor;

4) fourthly, the obligation which arose first.

(2) If a party requesting set-off is required to pay interest to the other party or compensate the other party for expenses in addition to the performance of the principal obligation, the set-off is deemed to discharge first the expenses, then the interest due and finally the principal obligation. The party requesting set-off shall not determine a different order for the performance of the obligations without the consent of the other party.

(3) The provisions of this section do not apply to set-offs effected under the circumstances specified in § 203 of this Act.

§ 202. Restrictions on set-off in event of contract entered into for benefit of third party

In the case of a contract entered into for the benefit of a third party, the party which is to perform an obligation for the benefit of the third party shall not set off a claim filed against such party for the performance of the obligation.

§ 203. Current account

(1) If monetary claims and obligations arising for both parties from contracts entered into in the continuing business relationship between the parties are to be calculated in total (current account), the claims and obligations are deemed to be set off by such calculation. In such case, the balance of the claims and obligations is the amount due.

(2) Claims not related to a continuing relationship between the parties shall not be set off pursuant to the procedure specified in subsection (1) of this section.

(3) Claims which may not be set off shall not be entered in a current account.

(4) The entry of a claim in a current account shall not deprive a party of the right to resort to legal remedies with regard to transactions from which the claim arose.

(5) If a claim entered in a current account is secured, the obligee may use the security to the extent of the secured claim in order to secure a claim for payment of the balance for the benefit of the obligee.

(6) The entry of a claim in a current account shall not preclude or restrict the liability of third parties for claims entered in the current account.

(7) Claims entered in a current account shall not be seized or be subject to a claim. Only claims for payment of the balance may be seized or be subject to a claim.

(8) If a claim for payment of the balance is seized for the benefit of the obligee of the party requesting set-off, the entry into a current account of obligations which arise from transactions concluded after the seizure does not apply with regard to the obligee.

§ 204. Acts relating to current account

(1) A party requesting set-off who organises the maintenance of a current account shall notify the other party of the balance of the account at the end of each calculation period, indicating the claims which have been entered in the account and of which the other party has not yet been notified. The duration of a calculation period is presumed to be one year.

(2) If the other party does not contest the balance sent to the party within a reasonable period of time, the balance is deemed to be correct. In such case, a negative balance is deemed to be an acknowledgement of an obligation.

(3) Interest shall be paid on the balance as of the receipt of the balance to the party for whom the balance is positive even if interest has already been paid on claims entered in the current account.

(4) A claim for payment of the balance falls due upon notification of the balance.

(5) The limitation period for a claim for payment of the balance shall be five years as of the date when the balance falls due.

§ 205. Termination of contract on current account

(1) If a contract on a current account is entered into for an unspecified term, either party may cancel the contract at the end of each calculation period by giving at least ten days' notice of the cancellation.

(2) Upon the death of a party to a contract on a current account, the other party and the successors of the deceased party may cancel the contract at any time.

(3) Regardless of the termination of a contract on a current account, payment of the balance may be required only after the end of the calculation period.

Division 5

Merger

§ 206. Termination of obligation by merger

(1) If an obligor and an obligee are consolidated in one and the same person, the obligation terminates. If an obligor and an obligee are consolidated in an obligation but the person has legitimate interest in the continuation of the obligation, the obligation shall not terminate.

(2) If merger is partial, the obligation terminates with respect to the consolidated part.

(3) If a pledge or other real right is established with regard to a claim, the claim remains in force with regard to the pledgee or the person holding the real right regardless of merger.

(4) The provisions of this section do not apply to claims arising from securities.

Division 6

Agreement on Termination of Obligation

§ 207. Termination of obligation by agreement

(1) An obligation terminates if the obligee and the obligor have agreed on the termination of the obligation due to the obligee waiving the claim.

(2) The provisions concerning termination of obligations apply if the parties to an obligation have agreed or the obligee admits that the obligation no longer exists.

Part 2

Transfer Deeds

Chapter 11

Contract of Sale

Division 1

General Provisions

§ 208. Definition of contract of sale

(1) By a contract of sale of a thing, a seller undertakes to deliver an existing thing, a thing to be manufactured or produced or a thing to be acquired in the future by the seller to the purchaser and to allow the transfer of ownership to the purchaser, and the purchaser undertakes to pay the purchase price for the thing to the seller in cash and to take delivery of the thing.

(2) The provisions of this Chapter also apply to contracts which are entered into to order a thing to be manufactured or produced, unless the party who orders the thing supplies the other party with a substantial part of the materials necessary for such manufacture or production. The provisions of this Chapter do not apply to contracts in which the preponderant part of the obligations of the party who furnishes the things consists of the supply of labour or other services.

(3) The provisions of this Act concerning the sale of things apply to the sale of rights and other objects, including the sale of energy, water and heat through a network, unless otherwise provided for in this Act and if this is not contrary to the nature of the object. The seller of a right shall allow the purchaser to acquire the right which is the object of the contract of sale.

(4) Consumer sale is the sale of a thing on the basis of a contract of sale where a consumer is sold a movable by a seller who enters into the contract in the course of his or her economic or professional activities.

§ 209. Obligation to deliver

(1) If a thing is to be delivered to a purchaser at a particular place, the seller shall make the thing ready to be placed at the disposal of the purchaser at the particular place and notify the purchaser that it is ready. If things with specific characteristics are the object of a contract, the things are not deemed to have been made ready to be placed at the disposal of the purchaser before the things have been clearly identified for delivery pursuant to the contract by use of markings, shipping documents or otherwise.

(2) The obligation to deliver a thing to the purchaser is deemed to have been performed if the seller has made the thing ready to be placed at the disposal of the purchaser at the particular place and has notified the purchaser thereof.

(3) If a thing is to be delivered to a purchaser at a particular place and the characteristics of the thing do not allow its separation by the seller before the purchaser takes delivery thereof, the thing is deemed to have been delivered to the purchaser if the seller has done all that is necessary to allow the purchaser to take delivery of the thing.

(4) If a seller is required to bring a thing to the purchaser, the seller shall deliver the thing to the purchaser. If a contract prescribes the carriage of things but the obligation of the

seller to bring the thing to the purchaser does not relate thereto, the obligation to deliver the thing to the purchaser is deemed to be performed upon delivery of the thing to a carrier who is required to carry the thing from the place of dispatch.

(5) Failure of the seller to deliver a thing to the purchaser in time in the event of consumer sale is deemed to be a fundamental breach of contract.

§ 210. Additional obligations of seller in event of carriage of things

(1) If a seller is required to hand over things to a carrier and the things are not clearly identified by markings, by shipping documents or otherwise, the seller shall notify the purchaser that the things have been handed over to the carrier and provide a detailed description of the things.

(2) If a seller is required to organise the carriage of things, the seller shall enter into such contracts as are necessary for carriage of the things to the destination according to the usual terms and by means of transport which are appropriate in the circumstances.

(3) If a seller is not required to enter into an insurance contract in respect of the carriage of the goods, then the seller shall, at the request of the purchaser, provide the purchaser with all available information necessary for the insurance contract to be entered into.

§ 211. Handing over of documents

(1) A seller shall hand over documents required for taking delivery of the thing and for the possession, use and disposal thereof (documents relating to the thing) to the purchaser in the form prescribed in the contract at the place and time of delivery. If a seller has a legitimate interest in retaining the original of a document relating to a thing, the seller shall, at the request of the purchaser, give the purchaser a transcript or an extract instead of the original document.

(2) Documents relating to things which are subject to carriage shall be handed over to the purchaser at the purchaser's place of business which has the closest relationship to the contract or, if the purchaser does not have a place of business, at the residence or seat of the seller. If documents are to be handed over against payment of the purchase price, the documents shall be handed over at the place of payment of the purchase price.

(3) The documents relating to things shall be handed over to the purchaser such that the purchaser has sufficient time to take delivery of the things at their destination without unreasonable delay or to dispose of the things freely.

§ 212. Notification obligation of seller

If the purchaser is required to transport the thing from the place of delivery and the seller

has the right to specify the time of delivery of things, the seller shall notify the purchaser timely of when the thing is ready to be placed at the disposal of the purchaser.

§ 213. Obligation to pay purchase price

(1) If the purchase price of a thing is to be calculated on the basis of the amount, measurement or weight of the thing, the calculation shall be based on the amount, measurement or weight of the thing at the time when the risk of accidental loss of or damage to the thing passes to the purchaser. If the purchase price of a thing is to be determined by the weight of the thing, it shall be presumed that the price is to be determined by the net weight of the thing.

(2) If a purchaser is required to pay the purchase price against the delivery of the thing or the handing over of a document, the purchaser shall pay at the place of delivery of the thing or the place where the documents are handed over.

(3) A purchaser is not required to pay the purchase price before being granted the opportunity to examine the things unless this is not possible due to the agreed manner of delivery or payment.

(4) In the event of consumer sale, a purchaser shall not be required to make advance payments to an extent greater than half of the purchase price.

§ 214. Obligation to pay purchase price when risk of accidental loss of or damage to thing passes to purchaser

(1) A purchaser shall pay the purchase price even if the purchased thing is accidentally lost or damaged after the risk of accidental loss of or damage to the thing has passed to the purchaser.

(2) The risk of accidental loss of or damage to a thing passes to the purchaser upon delivery of the thing.

(3) The risk of accidental loss of or damage to a thing also passes to the purchaser at the time when the purchaser is in delay with the performance of an act by which he or she is to facilitate the delivery of the thing, in particular if the purchaser fails to take delivery of the thing. If things with specific characteristics are sold and in the case where the purchaser is in delay, the risk of accidental loss of or damage to the things does not pass to the purchaser until the things which are the object of the contract are separated and the purchaser is notified thereof.

(4) The risk of accidental loss of or damage to a thing sold in transit passes to the purchaser retroactively as of the thing being handed over to the first carrier. This does not apply when a seller, at the time of entry into a contract of sale, is aware or ought to be aware that the thing is lost or has been damaged and does not notify the purchaser thereof.

(5) If, in the event of consumer sale, the seller is required to deliver a thing to the purchaser, the risk of accidental loss or damage does not pass to the purchaser before the delivery of the thing to the purchaser or before the purchaser is in delay in taking delivery of the thing.

(6) The right of a seller to withhold documents relating to a thing does not affect the passing of the risk of accidental loss or damage.

§ 215. Costs of entry into and performance of contracts

(1) The seller shall incur the delivery costs of a thing, in particular the measurement and weighting costs, and the purchaser shall incur the costs of taking delivery of the thing and costs relating to payment of the purchase price, as well as possible costs of preparing or attesting the contract of sale and costs relating to the making of an entry in a public register on the basis of the contract.

(2) If, at the request of the purchaser, a thing sold is to be dispatched to a place other than the contractual place of performance of the obligation, the purchaser shall incur the additional costs relating thereto.

(3) If, in the event of consumer sale, a thing is delivered to the purchaser by the seller or by a carrier authorised by the seller on the basis of a contract, the reimbursement of transport costs may be claimed from the purchaser only if the size of the costs or the information on the basis of which such costs are calculated was communicated to the purchaser not later than on entry into the contract. This also applies to costs which are related to the provision by the seller of other services to the purchaser with the consent of the purchaser in connection with the sale.

(4) Upon the sale of a right, the seller shall incur the costs of the acquisition and transfer of the right.

§ 216. Benefit, costs and duties relating to thing

(1) Benefit which is received from a thing before it is to be delivered belongs to the seller, unless the receipt of such benefit may reasonably have been expected after the thing is to have been delivered. Benefit which is received from a thing after it is to have been delivered belongs to the purchaser, unless the receipt of benefit may reasonably have been expected before the thing is to have been delivered.

(2) The seller shall incur all costs and duties relating to a thing until delivery of the thing or until the purchaser is in delay in taking delivery of the thing, except for costs which are caused by any circumstance arising from the purchaser.

§ 217. Conformity of thing

(1) Things delivered to a purchaser shall conform to the contract, in particular in respect of the quantity, quality, type, description and packaging. Documents relating to a thing shall also conform to the contract.

(2) A thing does not conform to a contract if:

1) the thing does not have the agreed characteristics;

2) failing an agreement concerning the characteristics of the thing, the thing is not fit for the particular purpose for which the purchaser needs it and of which the seller was or ought to have been aware at the time of entry into the contract if the purchaser could reasonably expect to rely on the professional skills or expertise of the seller, and in other cases for purposes for which such things would ordinarily be used;

3) the use of the thing is hindered by provisions of legislation of which the seller was aware or ought to have been aware at the time of entry into the contract;

4) third parties have claims or other rights which they may submit with respect to the thing;

5) the movable is not packaged in the manner usual for such things or, where there is no such manner, in a manner adequate to preserve and protect the thing;

6) in the event of consumer sale, the thing does not possess the quality usual for that type of thing which the purchaser may have reasonably expected based on the nature of the thing and considering the statements made publicly with respect to particular characteristics of the thing by the seller, producer or previous seller of the thing or by another retailer, in particular in the advertising of the thing or on labels.

(3) The liability of a seller in the case of statements made by the seller, producer or previous seller of the thing or another retailer specified in clause (2) 6 of this section does not apply if the seller was not aware or did not need to have been aware of the statement or if the seller proves that the statement had been withdrawn or changed by the time of entry into the contract or that the statement did not affect the purchase of the thing.

(4) In the case of an immovable or a movable entered in a public register, the rights which are entered in the land register or another public register but are not valid are also deemed to be third party rights encumbering a thing within the meaning of clause (2) 4) of this section.

(5) The lack of conformity of a purchased thing arising from the incorrect installation of the thing is deemed to be equal to the lack of conformity arising from the thing if the installation was carried out by the seller or at the responsibility of the seller. This also applies if the thing is installed by the purchaser and the incorrect installation is the result of insufficient information provided by the seller with respect to installation of the thing.

(6) Upon sale of the right to possess a thing, the seller shall deliver the thing to the purchaser without any lack of conformity, including being free from any right or claim of a third party.

(7) For the purposes of this Division, a producer is a person specified in § 1062 of this

Act and also a person who operates as a distributor or a supplier of services on the basis of a contract entered into with a producer.

§ 218. Liability of seller in event of lack of conformity of thing

(1) The seller is liable for any lack of conformity of a thing which exists at the time when the risk of accidental loss of or damage to the thing passes to the purchaser even if the lack of conformity becomes apparent after that time. In the event of consumer sale, the seller is liable for any lack of conformity of a thing which exists at the time when the thing is delivered to the purchaser even if the passing of the risk of accidental loss of or damage to the thing is agreed for an earlier date.

(2) In the event of consumer sale, the seller is liable for any lack of conformity of a thing which becomes apparent within two years as of the date of delivery of the thing to the purchaser. In the event of consumer sale, it is presumed that any lack of conformity which becomes apparent within six months as of the date of delivery of a thing to the purchaser already existed before the delivery of the thing, unless such presumption is contrary to the nature of the thing or the deficiency.

(3) The seller is also liable for any lack of conformity of a thing which becomes apparent after the risk of accidental loss of or damage to the thing passes to the purchaser if the lack of conformity of the thing arises from a violation of obligations by the seller.

(4) The seller is not liable for any lack of conformity of a thing if the purchaser was or ought to have been aware of the lack of conformity of the thing upon entry into the contract.

(5) Upon sale of an immovable or of a ship entered in the ship register, the seller shall have the notation concerning the right entered in the corresponding register or the claim securing the establishment of such right deleted even if the purchaser is aware of the right or the notation.

(6) The seller of an immovable shall not be held liable for the fact that the thing is subject to public taxes or non-monetary obligations.

§ 219. Obligation to examine things

(1) If a purchaser has entered into a contract of sale in the course of the purchaser's professional or economic activities, the purchaser shall promptly examine the purchased thing or have the purchased thing examined.

(2) If a contract of sale involves carriage of the thing, the purchaser may examine the thing upon its arrival at its destination.

(3) If a thing is redirected in transit or redispatched to another destination by the purchaser without a reasonable opportunity for examination of the thing by the purchaser, examination of the thing may be deferred until the thing has arrived at its new destination if, at

the time of entry into the contract, the seller was aware or ought to have been aware of the possibility of such redirection or redispatch.

§ 220. Notification of lack of conformity of things

(1) The purchaser shall notify the seller of any lack of conformity of a thing after he or she becomes or should become aware of the lack of conformity. In the event of consumer sale, the consumer shall notify the seller of any lack of conformity of a thing within two months after becoming aware of the lack of conformity.

(2) A purchaser who enters into a contract of sale in the course of the professional or economic activity thereof shall provide a detailed description of the lack of conformity when giving notification thereof.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) The purchaser shall not rely on the lack of conformity of a thing if the purchaser does not notify the seller thereof on time or, in the case of a contract entered into by the purchaser in the course of the professional or economic activity thereof, if the purchaser does not provide a sufficiently detailed description of the lack of conformity. If a purchaser has a reasonable excuse for the failure to give notice, the purchaser may, relying on the lack of conformity, reduce the purchase price or claim compensation for damages from the seller, except for any loss of profit.

§ 221. Specifications for relying on lack of conformity of things

(1) A purchaser may rely on the lack of conformity regardless of the purchaser's failure to examine a thing or give notification of the lack of conformity of the thing on time if:

1) the lack of conformity of the thing has been caused by the intent or gross negligence of the seller;

2) the seller is aware or ought to be aware of the lack of conformity of the thing or the circumstances related thereto and does not disclose such information to the purchaser.

(2) The seller shall not rely on an agreement which precludes or restricts the rights of the purchaser in connection with the lack of conformity of a thing if the seller is aware or ought to be aware that the thing does not conform to the contract and fails to notify the purchaser thereof.

§ 222. Requirement to perform contract as legal remedy

(1) If a thing does not conform to the contract, the purchaser may demand the repair of the thing or delivery of a substitute thing from the seller if this is possible and does not

cause the seller unreasonable costs or unreasonable inconvenience considering, inter alia, the value of the thing, the significance of the lack of conformity and the opportunity for the purchaser to acquire a thing which conforms to the contract from elsewhere without inconvenience. The seller may, instead of repairing the thing, deliver a substitute thing which conforms to the contract.

(2) In the case specified in the first sentence of subsection (1) of this section, the purchaser may, upon the lack of conformity of a thing, demand the delivery of a substitute thing only if the lack of conformity of the thing constitutes a fundamental breach of contract and provided that the given contract of sale is not a contract of customer sale.

(3) If a seller replaces a non-conforming thing with a thing which conforms to the contract, the seller may require the return of the non-conforming thing from the purchaser. In such case, the provisions of §§ 189-191 of this Act apply.

(4) The seller shall incur the costs relating to the repair of the thing or delivery of a substitute thing, in particular costs relating to transport, postage, work, travel and materials.

(5) If the purchaser legitimately requires the repair of a thing and the seller fails to repair the thing within a reasonable period of time, the purchaser may repair the thing or have the thing repaired, and claim compensation for any reasonable costs incurred thereupon from the seller.

(6) The purchaser loses the right to require the repair of a thing or delivery of a substitute thing from a seller if the purchaser does not submit a corresponding claim to the seller at the same time as a notice concerning the lack of conformity of the thing or within a reasonable period of time after submission of the notice, unless the behaviour of the seller is contrary to the principle of good faith.

(7) The provisions of subsection (6) of this section do not apply to customer sale.

§ 223. Fundamental breach of contract of sale by seller

(1) The seller is deemed to be in fundamental breach of a sales contract also if, inter alia, the repair or substitution of a thing is not possible or fails, or if the seller refuses to repair or substitute a thing without good reason or fails to repair or substitute a thing within a reasonable period of time after the seller is notified of the lack of conformity.

(2) In the event of customer sale, any unreasonable inconvenience caused to the purchaser by the repair or substitution of a thing is also deemed to be a fundamental breach of contract by the seller.

(3) In the cases specified in subsections (1) and (2) of this section, the purchaser is not required to determine an additional term specified in § 114 of this Act and has the right, inter alia, to withdraw from the contract.

§ 224. Restrictions on reduction of purchase price

The purchaser shall not reduce the purchase price:

1) if the seller repairs the thing or delivers a substitute thing which conforms to the contract;

2) if the purchaser unreasonably refuses to accept the proposal of the seller concerning the repair of the thing or delivery of a substitute thing;

3) upon the purchase of a used thing which is sold by public auction.

§ 225. Specifications for compensation for damage

The purchaser may also claim compensation from the seller for such damage as is caused due to use of the thing for purposes other than those intended if the damage arises from the seller providing insufficient information to the purchaser, and compensation for damage which is caused to the thing due to the lack of conformity thereof.

§ 226. Specifications regarding liability of seller upon sale according to sample, description or model

(1) In the event of sale according to a sample, description or model, it is presumed that the sample, description or model is the only standard for assessing the conformity of a thing. In such case, any deviation from the sample, description or model gives the purchaser the right to withdraw from the contract or use other rights which arise from the lack of conformity of the thing.

(2) If, based on an agreement or generally accepted practice, the sample, description or model is to be used only to assess approximate quality, the purchaser may withdraw from the contract only if the deviation from the sample, description or model is material.

§ 227. Beginning of expiry of claims arising from lack of conformity of purchased thing

The limitation period of a claim arising from the lack of conformity of a purchased thing begins as of the delivery of the thing to the purchaser. Upon delivery of a substitute thing by the seller, the limitation period begins as of the delivery of the substitute thing to the purchaser. Upon repair of a thing by the seller, the limitation period of claims against the eliminated deficiency begins anew as of the repair of the thing.

§ 228. Liability of producer, previous seller or other retailer to purchaser

If, in the event of consumer sale, the seller who sells a thing to a consumer is liable for any lack of conformity of the thing to the purchaser as a result of a statement made by the producer, previous seller or other retailer with respect to particular characteristics of the thing, it is presumed that the seller may claim compensation for damage caused thereto from the corresponding person in accordance with the relationship between them and to the extent of the liability of the seller to the consumer.

§ 229. Obligation of purchaser to take possession of and preserve things

(1) If a purchaser has taken possession of a thing but intends to withdraw from the contract or requires the delivery of a substitute thing or exercises another right as a result of which the thing is to be returned, the purchaser shall take reasonable measures to preserve and protect the thing. The purchaser has the right to refuse to deliver the thing until the seller reimburses the reasonable costs incurred in the preservation and protection of the thing.

(2) If a thing dispatched to a purchaser is placed at the disposal of the purchaser at its destination and the purchaser legitimately refuses to take delivery of the thing, the purchaser shall nevertheless take possession of the thing on behalf of the seller if this is possible without payment of the purchase price and without unreasonable inconvenience or expense to the purchaser. The purchaser is not required to take possession of the thing if the seller or the person who has the right to take possession of the thing on behalf of the seller is present at the destination.

(3) If the purchaser takes possession of a thing according to subsection (2) of this section, he or she has the rights specified in subsection (1) of this section.

(4) In the cases specified in subsections (1) and (2) of this section, the purchaser may deposit the thing with a third party pursuant to § 124 of this Act or sell the thing pursuant to § 125 of this Act.

§ 230. Warranty against defects

(1) Within the meaning of this Chapter, a warranty against defects is a promise made by a seller, previous seller or producer (warrantor) to replace or repair a sold thing without charge or for a charge and under the conditions prescribed in the warranty, or to ensure in other ways the compliance of the thing with the conditions prescribed in the warranty whereby the purchaser is given a broader warranty than that provided by law.

(2) A warranty period begins to run as of the delivery of the thing to the purchaser unless a later time for the beginning of the warranty period is prescribed in the contract or letter of guarantee. If the seller is required to dispatch the thing to the purchaser, the warranty period does not begin to run before the thing is delivered to the purchaser. The running of the warranty period is suspended for the time when the purchaser cannot use the thing due to a lack of conformity for which the warrantor is liable.

(3) It is presumed that a warranty against defects covers all defects of a thing which be-

come apparent appear during the warranty period.

(4) The procedure for exercising rights arising from a warranty against defects shall not be unreasonably cumbersome to the purchaser.

(5) A warranty against defects does not preclude or restrict the right of the purchaser to use other legal remedies arising from law or the contract.

§ 231. Specifications for warranty against defects in event of consumer sale

(1) In the event of consumer sale, a warranty against defects shall set out, in a manner understandable to the consumer, information concerning the subject matter of the warranty and the procedure for exercising the rights arising from the warranty. A warranty shall set out, inter alia, the following:

1) the name and address of the warrantor;

2) the person to address to exercise the rights arising from the warranty;

3) the rights granted to the consumer by the warranty;

4) the procedure for exercising the rights arising from the warranty;

5) the warranty period;

6) the scope of the warranty;

7) an explanation that, in addition to the rights arising from the warranty, the consumer has other rights arising from law.

(2) A consumer shall be given the opportunity to freely examine the conditions of the warranty before entering into a contract of sale. At the request of the consumer, the warranty shall be presented to the consumer in writing or by other durable medium which the consumer is able to use.

(3) Failure by the warrantor to present the information specified in subsections (1) or (2) of this section does not preclude or restrict the validity of the warranty.

(4) In the event of consumer sale, it is presumed that:

1) the warranty grants the purchaser the right to demand the repair of the thing or delivery of a substitute thing without charge during the warranty period;

2) a new warranty with the same duration as the original warranty will be granted for things replaced during the warranty period;

3) if a thing is repaired during the warranty period, the warranty is automatically extended by the length of the period of repair.

§ 232. Services provided in event of consumer sale

If, in the event of consumer sale, the purchaser may reasonably expect that services related to the use, maintenance or repair of the thing will be provided but the seller does not provide such services, the seller shall provide sufficient information to the purchaser at the time of delivery and, at the request of the consumer, after the delivery of the thing regarding the possibilities of using such services.

§ 233. Reservation of ownership

(1) If, upon the sale of a movable, it is agreed that the ownership of a thing remains with the seller until payment of the purchase price, ownership is presumed to transfer to the purchaser upon payment of the full purchase price (reservation of ownership).

(2) On the basis of a reservation on ownership, a seller may demand the purchaser to deliver the thing only if the seller has withdrawn from the contract. If the claim of the seller which is secured by the agreement on a reservation of ownership expires, the seller may demand the transfer of the thing pursuant to the provisions concerning protection of ownership.

§ 234. Extension and expiry of contract of sale of energy

(1) A contract to supply electric or thermal energy through a connection network entered into for a specified term is deemed to be extended for the same term and under the same conditions if at least one month before the expiry of the term of the contract neither party has notified the other of any desire to do otherwise.

(2) The provisions of subsection (1) of this section apply to contracts to supply gas, petroleum, water or other similar supplies through a connection network which are entered into for a specified term.

(3) Purchasers who are consumers may cancel contracts specified in subsections (1) and (2) of this section with one month's notice regardless of whether the contracts were entered into for a specified or unspecified term. Agreements which derogate from this to the prejudice of the consumer are void.

§ 235. Sale on approval

(1) Sale on approval is the sale of a thing on the basis of a conditional contract of sale upon which the thing is dispatched to the purchaser.

(2) A contract of sale on approval shall be entered into by the purchaser with a suspen-

sive condition of approval or a resolutive condition of non-approval. It is presumed that a contract of sale with a suspensive condition is entered into in the case of sale on approval.

(3) In the case of a contract of sale on approval with a suspensive condition, the seller shall bear the risk of accidental loss of or damage to the thing until approval by the purchaser. In the case of a contract of sale on approval with a resolutive condition, the purchaser shall bear the risk of accidental loss of or damage to the thing until the contract fails to be approved.

§ 236. Prohibition on violation of provisions

In the event of consumer sale, persons and agencies specified in law may, pursuant to the procedure provided by law, demand a seller who is in breach of provisions concerning a contract of sale specified in this Division and in the General Part of this Act to terminate such violation and refrain from violating the provisions.

§ 237. Mandatory nature of provisions concerning consumer sale

(1) In the event of consumer sale, agreements which are related to the legal remedies to be used in the case of a breach of contract and which derogate from the provisions of this Division and the General Part of this Act to the prejudice of the purchaser are void.

(2) If a contract is entered into as a result of a public tender, advertising or other similar economic activities taking place in Estonia, the provisions of this Division apply to contracts of consumer sale entered into with a purchaser residing in Estonia or in a Member State of the European Union regardless of the country whose law is applied to the contract.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

Division 2

Sale with Right of Repurchase

§ 238. Sale with right of repurchase

(1) Parties may agree in a contract of sale or after entry into a contract of sale that the seller has the right to repurchase the thing (sale with the right of repurchase).

(2) In the event of sale with the right of repurchase, the thing is deemed to have been repurchased by the seller when the seller submits corresponding notification to the purchaser.

(3) The notification specified in subsection (2) of this section shall be made in the same format as the contract of sale. In the case of a written contract of sale, the submission of a notarially attested or verified statement is sufficient.

(4) Upon repurchase, it is presumed that the price for which the object was sold is the repurchase price.

§ 239. Term for exercise of right of repurchase

The right of repurchase may be exercised in the case of immovables within ten years and in the case of other things within three years as of agreement on the conditions of the right of repurchase.

§ 240. Liability of purchaser

(1) If a purchased thing has perished or deteriorated before the right of repurchase has been exercised or if it cannot be transferred for any other reason due to circumstances arising from the purchaser, or if the purchaser has materially altered the thing, the purchaser shall compensate the seller for the damage arising therefrom. If a thing has deteriorated due to circumstances for which the purchaser is not liable or if it has not been altered materially, the seller shall not claim compensation for the damage caused thereby or reduce the purchase price.

(2) If a purchaser has disposed of a purchased thing before the exercise of the right of repurchase by the seller or if the thing has been disposed of upon compulsory execution or in bankruptcy proceedings, the seller is required to remove the rights of third persons arising from such disposal.

§ 241. Compensation of costs

A purchaser may claim compensation from the seller for costs incurred by the purchaser on the thing purchased thereby before repurchase and to the extent that the value of the thing has increased as a result of the costs incurred.

§ 242. Repurchase at value of thing at time of repurchase

If the parties agree that the repurchase price is the value of an object at the time of repurchase, the provisions of §§ 240 and 241 of this Act do not apply.

§ 243. Several persons entitled to repurchase

If the right of repurchase belongs to several persons jointly, these persons may exercise the right of repurchase only jointly to the full extent. If the right of repurchase terminates for one entitled person or if one of them waives the right, the remaining entitled persons have the right to exercise the right of repurchase jointly to the full extent.

Division 3

Sale by Right of Pre-emption

§ 244. Definition and exercise of right of pre-emption

(1) The right of pre-emption is a right upon the exercise of which a contract of sale between a person with a right of pre-emption and a seller is deemed to be entered into on the same conditions which the seller agreed with the buyer. A contract of sale entered into with a purchaser or obligations arising therefrom do not become invalid upon the exercise of the right of pre-emption.

(2) A right of pre-emption is created on the basis of law or by a transaction.

(2^1) A right of pre-emption created on the basis of a transaction applies to a contract of sale entered into by a seller with whom the creation of the right of pre-emption was agreed upon. A right of pre-emption created on the basis of law may be exercised upon each sale of a thing.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(3) A person with a right of pre-emption with respect to a thing may exercise the right if the seller has entered into a contract of sale with a purchaser. A right of pre-emption may be exercised also in case of other forms of transfer for charge.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(4) The right of pre-emption is exercised by the person with the right of pre-emption submitting corresponding notification to the seller.

(5) The notification specified in subsection (4) of this section shall be made in the same form as the contract of sale. In the case of a written contract of sale, the submission of a notarially attested or verified statement is sufficient.

(6) Disposition of a thing to which a right of pre-emption created on the basis of law applies is void if the disposition is made after the right to exercise the right of pre-emption is created and if it would prejudice or restrict the exercising of the right of pre-emption. The provisions of this subsection do not apply to a pre-emptive right created on the basis of law in the case of the transfer of an immovable or a part thereof.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

§ 245. Void conditions

An agreement between the seller and purchaser is void with respect to a person with the right of pre-emption if, according to the agreement,:

1) the contract of sale is valid only if the right of pre-emption is not exercised;

2) the seller has been granted the right to withdraw from the contract in the case where the right of pre-emption is exercised.

§ 246. Accessory obligations

(1) If the purchaser has an accessory obligation arising from a contract which the person with the right of pre-emption is not able to perform, the person with the right of pre-emption shall, instead of performing the accessory obligation, pay the usual value thereof.

(2) The right of pre-emption cannot be performed if the purchaser has an accessory obligation arising from a contract which is not monetarily appraisable and which the person with the right of pre-emption is not able to perform. An accessory obligation does not impede the right of pre-emption being exercised and the person with the right of pre-emption is not required to perform the accessory obligation if it may be presumed that the seller and the purchaser would not have agreed on an accessory obligation if no right of pre-emption had existed.

§ 247. Exercise of right of pre-emption concerning several things

If a purchaser purchases a thing concerning which a right of pre-emption applies together with other things for an aggregate price, the person with the right of pre-emption shall pay a part of the aggregate price in proportion to the value of the thing. The seller may demand that the person with the right of pre-emption also purchase other things which cannot, without harmful consequences for the seller, be separated from the thing concerning which the right of pre-emption applies.

§ 248. Payment of purchase price by instalments

(1) If, pursuant to the contract of sale, the purchaser is not required to pay the purchase price upon entry into the contract, the person with the right of pre-emption has the same right only if he or she gives security for the amount paid by instalments.

(2) If an immovable or a movable or right entered in a public register is the object of a contract of sale with the right of pre-emption and if the purchaser is not required to pay the purchase price upon entry into the contract, the person with the right of pre-emption is not

required to give security in so far as establishment of a pledge on the object of the contract of sale has been agreed in order to ensure payment of the purchase price by instalments, or an obligation has been taken over for the ensurement of which a pledge has been established on the object of the contract of sale.

§ 249. Notification of sale to person with right of pre-emption

(1) A seller shall promptly notify the person with the right of pre-emption of any contract of sale entered into with a purchaser and the content thereof.

(2) If a contract of sale is entered into in written form, the seller is required to present the contract to the person with the right of pre-emption at the request of such person.

(3) The notification obligation of a seller is also deemed to have been performed if the purchaser notifies the person with the right of pre-emption of the contract of sale and the content thereof or presents the contract to such person.

§ 250. Term for exercise of right of pre-emption

The right of pre-emption may be exercised within two weeks after the receipt of the notice specified in § 249 of this Act or, in the case of immovables, within two months after the receipt of the notice specified in § 249 of this Act, unless a different term is prescribed by law or the contract.

§ 251. Restrictions on exercise of right of pre-emption

(1) The right of pre-emption cannot be exercised if the thing is sold upon compulsory execution or in bankruptcy proceedings or if the thing is expropriated.

(2) The right of pre-emption cannot be exercised if the thing is sold to the descendants, or ascendants or spouse of the seller.

§ 252. Exercise of right of pre-emption by several persons

(1) If a right of pre-emption belongs to several persons jointly, these persons may exercise the right of pre-emption only jointly to the full extent. If the right of pre-emption terminates for one entitled person or if one entitled person waives the right, the remaining entitled persons have the right to exercise the right of pre-emption jointly to the full extent.

(2) If the right of pre-emption belongs to several persons separately and they wish to exercise the right, they shall draw lots unless otherwise provided by law or an agreement of the parties.

(3) A right of pre-emption acquired pursuant to law shall be preferred to a right of pre-emption established by a transaction.

§ 253. Non-transferability of right of pre-emption

(1) A right of pre-emption is not transferable.

(2) A right of pre-emption for a specified term passes to the successors of the person with the right of pre-emption.

Chapter 12

Barter Agreements

§ 254. Definition of barter agreement

(1) In a barter agreement, the parties mutually undertake to transfer an object to the other party and to allow the transfer of ownership of the object and the transfer of any other right which grants the right to dispose of the object.

(2) The provisions concerning contracts of sale of apply to barter agreements. In a barter agreement, the party who transfers is deemed to be the seller and the party who takes delivery is deemed to be the purchaser of the object of the agreement.

§ 255. Price of bartered objects

The price of objects subject to barter is presumed to be equal.

Chapter 13

Factoring Contract

§ 256. Definition of factoring contract

In a factoring contract, one person (client in factoring) undertakes to assign to another person (factor) financial claims against a third person (obligor in factoring) which arise from a contract on the basis of which the client, in the client's economic or financial activities, sells an object or provides services to the obligor, and the factor undertakes to:

1) pay for the claim and bear the risk of non-fulfilment of the claim, or

2) grant credit to the client out of the fulfilment of the claim, administer the claim for the client and exercise rights arising from the claim, including organising related accounting, and collect the claim.

§ 257. Notification of assignment of claim

A client in factoring is required to notify the obligor of the assignment of the claim.

§ 258. Breach of contract

(1) If a client in factoring violates a contract of sale or provision of services entered into between the client in factoring and the obligor and if a financial claim arising from the contract is assigned to the factor, the obligor shall not claim repayment of money paid to the factor on the basis of the claim if the obligor can claim repayment from the client.

(2) In the case of a breach of contract by a party specified in subsection (1) of this section, the obligor in factoring may still claim repayment of money from the factor which was paid to the factor on the basis of a claim to the extent that the factor:

1) did not perform the obligation to make a payment to the client in the part of this claim;

2) made the payment to the client at a time when he or she was or ought to have been aware of the breach of the contract of sale or provision of services by the client.

Chapter 14

Gratuitious Contract

§ 259. Definition of gratuitious contract

(1) In a gratuitious contract, one person (donor) undertakes to transfer an object belonging thereto to another person (donee) and allow the transfer of ownership to the donee or waive a patrimonial right in favour of the donee or enrich the donee in another manner.

(2) The following are not deemed to be gifts in favour of another person:

1) avoidance of acquiring assets,

2) waiving of rights which have not yet been acquired;

3) renunciation of an estate or legacy.

§ 260. Gratuitious contract in favour of unborn child

A gratuitious contract may be entered into in favour of an unborn but conceived child or in favour of a future child of a specified person alive at the time the gift is made even if the child has not yet been conceived. In such case, the parent or guardian of the future child shall decide on the acceptance of the gift.

§ 261. Form of gratuitious contract

(1) An application by a donor to assume obligations arising from a gift shall be prepared in writing unless otherwise provided by law.

(2) A gratuitious contract is deemed to be valid upon performance of the obligations which arise from the gratuitious contract even if the formal requirements provided for in sub-section (1) of this section are not complied with.

§ 262. Donatio causa mortis

If a gratuitious contract is entered into causa mortis, the provisions of the Law of Succession Act (RT I 1996, 38, 752; 1999, 10, 155; 88, 807; 2001, 56, 336; 93, 565; 2002, 53, 336) concerning legacy or testament apply thereto. If such obligation arising from a gratuitious contract is still performed during the lifetime of the donor, the provisions concerning gratuitious contracts apply thereto.

§ 263. Donor's obligation to transfer

A donor shall deliver the gift to the donee or allow the receipt to take possession of the gift in another manner, and shall remove all impediments to possession of the object.

§ 264. Liability of donor for breach of contract

(1) Upon assessment of the conformity of a gift to the contract, the provisions of §§ 217 and 218 of this Act apply as appropriate.

(2) If a gift does not conform with the contract, the donor is liable only if the donor did not notify the donee of the lack of conformity intentionally or due to gross negligence or if the donor has undertaken such liability.

(3) If a donor had promised to deliver a thing only with specific characteristics and which the donor first had to acquire, and if the delivered thing did not conform to the contract, the donee may demand the delivery of a thing which conforms to the contract instead of the defective thing if the donor was aware or ought to have been aware of the defect at the time of acquiring the thing. If a donor does not give notification of the defects of a thing intentionally, a donee may claim compensation for the damage caused by violation of the obligation instead of delivery of a thing which conforms to the contract.

(4) The provisions concerning the liability of the seller for the lack of conformity of a sold thing apply to the demands of a donee specified in subsection (3) of this section.

(5) A donor shall not pay a penalty for late payment if the transfer of a gift is delayed, or transfer the benefit received from the granted object.

§ 265. Encumbrances and obligations for donees

(1) A gratuitious contract may prescribe duties and obligations for donees.

(2) If the performance of duties or obligations is in the public interest, a competent state agency or local government agency may also demand the performance thereof after the death of the donor.

(3) If an encumbrance is in favour of several persons without specifying the share of each person and one of these persons dies, the share of the deceased shall accrue to the shares of the other persons.

(4) If the value of a gift does not cover the costs necessary to fulfil a duty due to its lack of conformity, a donee may refuse to fulfil the duty to the extent exceeding the value of the gift until the expenses which exceed the value of the gift are compensated thereto. If a donee still fulfils a duty, the recipient may demand that the donor compensate the expenses which exceed the value of the gift and are incurred upon fulfilment of the duty.

§ 266. Specifications for termination of gratuitious contract

(1) A gratuitious contract which has not yet been performed by the donor terminates upon the suspension of execution proceedings due to a lack of assets or on the declaration of the donor as bankrupt.

(2) If a gratuitious contract prescribes the payment of an allowance which comprises payment by instalments to a donee who is a natural person, the contract terminates upon the death of the donor or donee who is a natural person or on the dissolution of the donor who is a legal person.

§ 267. Withdrawal from gratuitious contract before performance thereof

A donor may refuse to perform a contract before transfering a gift to a donee and withdraw from the contract if:

1) the donee behaves in a manner displaying gross ingratitude towards the donor or a person close to the donor;

2) in the case of performance of the contract, the donor is unable to perform a maintenance obligation arising from law or to maintain himself or herself reasonably, unless the donor has placed himself or herself in this situation intentionally or due to gross negligence or unless the donor pays the necessary maintenance sum;

3) the donee unjustifiably fails to fulfil a duty or condition related to the contract;

4) new or significantly greater maintenance obligations arise for the donor after entry into the contract.

5) the donee dies.

§ 268. Withdrawal from gratuitious contract after performance thereof

(1) If a gratuitious contract is performed, the donor may withdraw from the contract and reclaim the gift from the donee according to the provisions concerning unjustified enrichment in the cases prescribed in clauses 267 1)-3) of this Act.

(2) If a donor withdraws from a gratuitious contract on the basis provided for in clause 267 2) of this Act, the contract is not deemed to have been terminated if the donee pays the sum needed for the maintenance of the dependant pursuant to the procedure provided for in § 571 of this Act as of the transfer of the gift until the death of the donor.

§ 269. Restriction on compensation for damage

In the cases specified in §§ 267 and 268 of this Act, the donee does not have the right to claim compensation for the damage caused to him or her by withdrawal from the contract.

§ 270. Restrictions on withdrawal

(1) A donor may withdraw from a gratuitious contract within one year as of the time when the donor becomes or should have become aware of the creation of the right of withdrawal. If a gratuitious contract is performed, the donor may not withdraw from a gratuitious contract after the death of the donee.

(2) If a donor dies before the expiry of the term provided for in subsection (1) of this section, the rights specified in subsection (1) transfer to his or her successors to the extent of the remaining term. Successors may withdraw from a gratuitious contract within the term

specified in subsection (1) of this section only if the donee intentionally and unlawfully caused the death of the donor or hinders his or her withdrawal from the contract.

(3) A donor shall not withdraw from a gratuitious contract which is entered into for the observation of a moral obligation.

Part 3

Contracts for Use

Chapter 15

Lease Contract

Division 1

General Provisions

§ 271. Definition of lease contract

By a lease contract, one person (the lessor) undertakes to grant the use of a thing to another person (the lessee) and the lessee undertakes to pay a fee (rent) therefor to the lessor.

§ 272. Application of provisions upon lease of dwellings and business premises

(1) A dwelling is a residential building or apartment which is used for permanent habitation. Business premises are premises used in economic or professional activities.

(2) The provisions concerning the lease of immovables also apply to the lease of dwellings and business premises unless otherwise provided by law.

(3) The provisions concerning residential lease contracts and lease contracts of business premises also apply to the lease of things granted for use together with the dwelling or business premises by a lessor to a lessee.

(4) The provisions concerning residential lease contracts and lease contracts of business premises do not apply to the following:

1) lease contracts, with a term not exceeding three months, of premises of accommo-

dation establishments and premises intended for holidays, and lease contracts entered into for the temporary use of other premises;

2) lease contracts the purpose of which is to sublease rooms for profit;

3) lease contracts the object of which is a dwelling which is part of the dwellings used by the lessor and the greater part of which is furnished by the lessor;

4) lease contracts the object of which is a dwelling which the state, a local government or other legal person in public law leases, in order to perform its functions arising from law, to persons who urgently need a dwelling or persons acquiring education, if the lessee is informed of the intended use of the room upon entry into the contract.

§ 273. Nullity of agreement related to residential lease contract

An agreement which makes entry into or continuation of a residential lease contract dependent on an obligation of a lessee in respect of a lessor or third party is void unless the obligation is directly related to the use of the leased dwelling.

§ 274. Effect of format of residential lease contract on term of contract

If a residential lease contract with a term exceeding one year is not entered into in writing, the contract is deemed to have been entered into for an unspecified term, but the contract shall not be cancelled such that it terminates earlier than one year after the transfer of the dwelling to the lessee.

§ 275. Mandatory nature of provisions

An agreement which derogates from the provisions of law regarding the rights, obligations and liability of the parties to a residential lease contract to the detriment of the lessee is void.

Division 2

Rights and Obligations of Parties

§ 276. General obligations of parties

(1) A lessor is required to deliver a thing, together with its accessories, to a lessee by the agreed time and in a suitable condition for contractual use and to ensure that the thing is

maintained in such condition during the validity of the contract.

(2) A lessee shall use a thing with prudence and according to the intended purpose which is the basis for the lease.

(3) The lessee of a dwelling or business premises shall take the interests of other residents and neighbours into account.

§ 277. Failure to transfer leased thing on time and transfer of thing not conforming to contract

(1) If a lessor does not deliver a thing at an agreed time or transfers a thing the defects of which preclude the use of the thing for its intended purpose or restrict the use thereof to a significant extent, the lessee may withdraw from the contract.

(2) If, upon transfer of a thing, the lessee knows or ought to know that the thing does not conform to the contract but accepts the thing irrespective thereof, the lessee loses the right to withdraw from the contract and may exercise the rights provided for in § 278 of this Act only if the lessee reserves this right upon accepting the thing.

§ 278. Defects in leased thing which arise during term of contract and obstacle to use of thing

If a leased thing is, during the term of a contract, affected with a defect for which the lessee is not responsible and which the lessee need not remove at the expense thereof, or if there is an obstacle to the contractual use of the thing, the lessee may:

1) demand that the lessor remove the defect or obstacle pursuant to the provisions of § 279 of this Act;

2) demand that the lessor take over a legal dispute with a third party;

3) demand compensation for the damage from the lessor;

4) reduce rent pursuant to the provisions of § 296 of this Act;

5) deposit rent pursuant to the provisions of § 298 of this Act.

§ 279. Removal of defect or obstacle

(1) If a lessor knows or ought to know about a defect or obstacle specified in § 278 of this Act but does not remove it within a reasonable period of time after the lessor becomes or ought to have become aware thereof, the lessee may cancel the contract without advance notice if the defect or obstacle precludes the use of the thing for the intended purpose

or restricts such use to a significant extent.

(2) A lessee does not have the right to demand the removal of a defect if the lessor substitutes the defective thing with a thing not affected by defects within a reasonable period of time.

(3) A lessee may remove a defect or obstacle and demand reimbursement of the necessary expenses incurred therefor if the lessor delays removal of the defect or obstacle or if the defect or obstacle only restricts the possibility of using the thing for the intended purpose to an insignificant extent.

(4) Agreements which derogate from the provisions of subsections (1) and (3) of this section to the detriment of the lessee are void.

§ 280. Removal of minor defects

A lessee shall remove the defects of a leased thing at the expense of the lessee if these defects can be removed by light cleaning or maintenance which is in any case necessary for the ordinary preservation of the thing.

§ 281. Prohibition on restriction of rights of lessee

An agreement concerning preclusion or restriction of the rights of a lessee in connection with the non-conformity of a leased thing to the contract is void if the lessor knows or ought to know, upon entry into the contract, that the thing does not conform to the contract and fails to notify the lessee thereof.

§ 282. Notification obligation of lessee

(1) A lessee shall promptly notify the lessor of the following:

1) the lack of conformity of the thing to the contract unless the lessee is required to correct the instance of non-conformity;

2) danger to the thing if it is necessary to take measures in order to avert the danger;

3) the right of a third party to the thing which becomes known to the lessee.

(2) If a lessee violates an obligation specified in subsection (1) of this section, the lessee shall compensate the lessor for loss caused by violation of the obligation.

(3) If a lessor cannot remove the defect of a leased thing or an obstacle to use of the thing for the reason that the lessee has violated an obligation specified in subsection (1) of this section, the lessee shall not exercise the rights provided for in § 278 of this Act in re-

spect of the lessor or exercise the right of extraordinary cancellation of lease contract in the case provided for in subsection 314 (1) of this Act without granting the lessor a reasonable term to re-enable use of the leased thing.

§ 283. Obligation of lessee to tolerate

(1) A lessee shall tolerate work performed in respect of a thing and also other effects on the thing which are necessary in order to preserve the thing, remove defects, prevent danger or eliminate the consequences thereof. The obligation to tolerate work performed in respect of a thing and other effects on the thing does not preclude or restrict the right of a lessee to reduce rent or demand compensation for damage due to the work or other effects.

(2) A lessee shall allow the lessor to examine a thing if this is necessary to preserve the thing or to transfer or lease the thing to another person.

(3) A lessor shall notify a lessee of work performed and examination of a thing in good time and take the interests of the lessee into account upon performance of the work.

§ 284. Improvements and alterations made to thing by lessor

(1) A lessor may make improvements and alterations to a thing and the lessee shall tolerate the works and other effects on the thing related to the improvements and alterations, unless the work and effects are unfairly burdensome to the lessee.

(2) At least two months before commencement of the making of improvements and alterations, the lessor shall notify the lessee in a format which can be reproduced in writing of the nature, extent, time of commencement and expected duration of the measures planned for making the improvements and alterations, and of any potential increase in the rent which may arise therefrom.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) A lessee may cancel a contract within fourteen days as of receipt of a notice specified in subsection (2) of this section by giving at least thirty days' notice. If a lessee cancels a contract, the making of improvements and alterations shall not commence before termination of the contract.

(4) The provisions of subsections (2) and (3) of this section do not apply if the improvements and alterations are insignificant and do not bring about an increase in the rent.

(5) Upon making improvements and alterations, the lessor shall take the interests of the lessee into account. The obligation to take the interests of the lessee into account does not preclude or restrict the right of the lessee to reduce the rent or demand compensation for damage. The lessor shall, to a reasonable extent, reimburse the expenses incurred by the lessee as a result of the improvements and alterations and, at the request of the lessee, pay such expenses to the lessee in advance.

§ 285. Improvements and alterations made to thing by lessee

(1) A lessee may make improvements and alterations to a leased thing only with the lessor's consent which is submitted in a format which can be reproduced in writing. The lessor shall not refuse to grant consent if the improvements and alterations are necessary in order to use the thing or manage the thing reasonably.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) If the lessor consents to improvements and alterations, the lessor may demand that the original condition be restored only if this has been agreed in a format which can be reproduced in writing.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) Upon expiry of a lease contract, the lessee may remove an improvement or alteration made to a thing if this is possible without damaging the thing. The lessee does not have the right to remove an improvement or alteration if the lessor pays a reasonable compensation therefor, unless the lessee has a legitimate interest in removing the improvement or alteration.

§ 286. Compensating lessee for expenses

(1) If, upon expiry of a lease contract, it becomes evident that the value of the thing has increased considerably due to the improvements or alterations made with the consent of the lessor, the lessee may demand reasonable compensation therefor.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(2) A lessee may demand that the lessor compensate for expenses other than those specified in subsection (1) of this section pursuant to the provisions regarding *negotiorum gestio*.

§ 287. Prohibition on agreement on contractual penalty upon lease of dwellings

Any agreement which requires the lessee of a dwelling to pay a contractual penalty upon violation of a contract is void.

§ 288. Sublease of thing

(1) A lessee may, with the consent of the lessor, transfer the use of a thing fully or partially to a third party (sublease), particularly to sublet the thing.

(2) A lessor may refuse to grant consent for the sublease of a thing only if the lessor has good reason therefor, particularly if:

1) the lessee does not disclose the conditions for the sublease to the lessor;

2) the sublease would cause significant loss to the lessor;

3) the sublease would be unreasonably burdensome on the leased premises;

4) the lessor has good reason therefor arising from the identity of the sublessee.

(3) If a lessor refuses to grant consent for the sublease of a thing without good reason, the lessee may cancel the contract taking into account the terms provided for in § 312 of this Act.

(4) If the sublease of a thing may be expected only in conjunction with a reasonable increase in the rent, the consent may be made subject to the condition that the lessee agrees to the increase in the rent.

(5) If a lessee transfers the use of a thing to a sublessee, the lessee shall be equally responsible for the activities of the sublessee and for the activities of the lessee.

(6) A sublessee shall not use a thing after expiry of the lease contract or in any other manner than that permitted to the lessee. The lessor may demand this directly from the sublessee.

§ 289. Accommodation of family members of lessee of dwelling

The lessee of a dwelling has the right to accommodate in the leased dwelling his or her spouse, minor children and parents who are incapacitated for work without the consent of the lessor unless it is agreed in the lease contract that the lessee may do so only with the consent of the lessor.

§ 290. Transfer of lease contract

(1) A lessee may transfer the rights and obligations arising from a lease contract to a third party with the lessor's consent in a format which can be reproduced in writing.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) Upon transfer of the rights and obligations arising from a lease contract, the initial lessee and the person to whom the rights and obligations of the lessee are transferred shall be solidarily liable for performance of the obligations to the lessor which arise from the contract. The liability of the initial lessee expires as of the time when the lessor could cancel the lease contract for the first time or as of the time when the lease contract is terminated, but not later than two years after the transfer of the rights and obligations.

§ 291. Transfer of lease contract upon change of ownership of leased immovable

(1) If a lessor transfers an immovable after transfer of the immovable into the possession of a lessee, or if the owner of a leased thing changes after transfer of the thing into the possession of the lessee in the event of the transfer of the thing upon compulsory execution or in bankruptcy proceedings, the rights and obligations of the lessor arising from the lease contract are transferred to the acquirer of the thing.

(2) Upon constitution of a right of superficies or establishment of a usufruct on a leased thing after transfer of the thing into the possession of the lessee, the rights and obligations arising from the lease contract are transferred from the owner of the thing to the person with the limited real right.

(3) Upon establishment of a real servitude or personal right of use on a thing and if the exercise of the servitude restricts the rights of the lessee arising from the lease contract, the rights and obligations of the lessor are transferred to the person who is entitled according to the real servitude or personal right of use.

(4) If the new lessor violates an obligation arising from the lease contract, the previous lessor shall be liable as a surety for three years as of the transfer of the rights and obligations of the lessor for damage caused to the lessee due to violation of the obligation.

Division 3

Rent and Accessory Expenses

§ 292. Accessory expenses

(1) In addition to the payment of rent, a lessee shall bear other expenses related to the leased thing (accessory expenses) only if so agreed. Charges for the services and acts of a lessor or a third party which are related to the use of a thing are accessory expenses.

(2) The lessor shall, at the request of the lessee, enable the lessee to examine documents certifying accessory expenses.

§ 293. Taxes and duties

All taxes and duties related to a thing shall be borne by the lessor unless agreed otherwise.

§ 294. Due date

If the rent is measured by certain periods of time, the rent and accessory expenses shall be payable after expiration of each of the corresponding periods of time, unless the parties have agreed otherwise. If the rent is not measured by periods of time, the lessee shall pay the rent and accessory expenses upon expiry of the contract.

§ 295. Obligation to disclose previous rent

Upon entry into a contract, the lessee may demand to be informed by the lessor of the rent payable according to the previous lease contract.

§ 296. Refusal to pay rent and reduction of rent

(1) A lessee need not pay rent or bear accessory expenses during any period when the lessee cannot use the thing for its intended purpose due to a defect or obstacle specified in § 278 of this Act or for the reason that the lessor has not granted use of the thing to the lessee.

(2) If the possibility of using the thing for its intended purpose has only diminished due to a defect or obstacle specified in § 278 of this Act, the lessee may reduce the rent to an extent corresponding to the defect for the period from becoming aware of the defect until removal of the defect.

(3) The lessee shall also pay rent for the period when the lessee is not able to use the thing due to circumstances depending on the lessee, particularly due to the absence of the lessee, although the lessee may deduct the amounts saved by the lessor from the rent and the value of any benefit received from the thing being used differently.

§ 297. Notification of set-off and refusal to pay rent

(1) The lessee of a dwelling or business premises may set off a claim belonging to the lessee against a lease claim of the lessor or may refuse to pay the rent on the bases provided by law if the lessee notifies the lessor of this intention at least one month prior to the due date for payment of the rent and in a format which can be reproduced in writing.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) Agreements which derogate from the provisions of subsection (1) of this section are void.

§ 298. Deposit of rent

(1) If the lessee of a dwelling or business premises demands that the lessor remove de-

fects or obstacles specified in § 278 of this Act, the lessee may set a term therefor a format which can be reproduced in writing and warn the lessor that, if the defects or obstacles are not removed, the lessee will deposit the rent which falls due after expiry of the term pursuant to the provisions of § 120 of this Act. The lessee shall notify the lessor of such deposit in a format which can be reproduced in writing.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) The lessor may demand payment of the deposited amount if the lessee does not file a claim specified in subsection (1) of this section against the lessor with a lease committee or court within thirty days as of the time when the first rent deposited becomes collectable.

§ 299. Increase in rent in case of lease contract for unspecified term

(1) In the case of a lease contract for an unspecified term, it is presumed that the lessor may raise the rent as follows:

1) upon the lease of immovables, ships entered in the ship register and aircraft entered in the Estonian aircraft register, after each six months as of entry into the contract;

2) upon the lease of furnished rooms or separately leased parking places, places in garages and the like, each month as of entry into the contract.

(2) The lessor of a dwelling shall notify the lessee of any increase in the rent in a format which can be reproduced in writing not later than thirty days before the increase in the rent and shall provide the reasons therefor. The notice shall clearly set out the following:

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

1) the extent of the increase in the rent and the new amount of rent;

2) the date as of which the rent is increased;

3) the reasons for increasing the rent and a calculation of the rent;

4) the procedure for contesting the increase in the rent.

(3) An increase in the rent is void if the lessor does not give notification thereof in the manner and form specified in subsections (1) and (2) of this section or warns the lessee that the lessor will cancel the lease contract if the increase in the rent is contested.

(4) Even if it is agreed in the lease contract that the lessor may unilaterally amend the terms and conditions of the contract not related to the amount of rent, the provisions of subsections (1)-(3) of this section apply if the lessor unilaterally amends the contract terms to the detriment of the lessee, particularly if the lessor reduces the services hitherto provided to the lessee or imposes new accessory expenses on the lessee.

§ 300. Agreement on periodical increase in rent of dwelling

An agreement on a periodical increase in the rent of a dwelling is valid only if:

1) the lease contract is entered into with a term of at least three years and

2) the rent increases not more than once a year and

3) the extent of the increase in the rent or the basis for calculation thereof are precisely determined.

§ 301. Excessive amount of rent for dwelling

(1) The rent for a dwelling is excessive if unreasonable benefit is received from the lease of the dwelling, except in the case of a luxury apartment or house.

(2) The amount of the rent for a dwelling is not excessive if it does not exceed the usual rent for a dwelling in a similar location and condition.

(3) An increase in the rent is not excessive if it is based on an increase in the expenses incurred in relation to the dwelling or an increase in the obligations of the lessor or if the increase in the rent is necessary in order to make reasonable improvements or alterations, including improving the condition of a part of a leased room or building such that the room or building is in the usual condition for such rooms and buildings.

§ 302. Contestation of amount of rent for dwelling during period of validity of contract

(1) If a lessor receives excessive benefit due to significant changes in the bases for calculation of the rent, particularly a decrease in expenses, the lessee may contest the excessive amount of the rent for the dwelling and claim a reduction of the rent as of the submission of an application with a lease committee or court.

(2) A lessee shall submit a request for reduction of the rent in a format which can be reproduced in writing to the lessor, who shall notify the lessee of the opinion of the lessor concerning the request within thirty days.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) If a lessor does not consent in full or in part to the reduction of the rent or does not respond to the request of a lessee specified in subsection (2) of this section within the prescribed term, the lessee may file a claim for reduction of the rent with a lease committee or court within thirty days as of the expiry of the term for responding.

§ 303. Contestation of increase in rent for dwelling

(1) A lessee may contest an excessive increase in the amount of the rent for a dwelling as defined in § 301 of this Act within thirty days as of informing the lessee thereof.

(2) Even if it is agreed in the lease contract that the lessor may unilaterally amend the terms and conditions of the contract which are not related to the amount of rent, the lessee may, within the term provided for in subsection (1) of this section, contest an amendment made unilaterally by the lessor to the detriment of the lessee, particularly any reduction of the services provided to the lessee or the imposition of new accessory expenses on the lessee.

§ 304. Lease claim upon change of ownership of leased thing

(1) Upon a change of the ownership of a leased thing, the acquirer may demand that the lessee pay rent as of the calendar month following the calendar month in which ownership is transferred. Any rent for the time before the transfer shall be paid to the former lessor.

(2) If, before a change of ownership, the lessor has disposed of a lease claim transferable to the acquirer of the thing, the claim applies to the acquirer only in so far as the acquirer is aware of the disposal of the claim upon the transfer of ownership.

(3) If the lessee has given security to the lessor of an immovable for performance of the obligations of the lessee, the security shall be transferred to the acquirer of the immovable upon transfer of the immovable.

(4) The provisions of subsections (1)-(3) of this section also apply correspondingly to the transfer of the rights and obligations arising from a lease contract if the acquirer of the leased thing transfers the thing or the thing is encumbered with a right of superficies or servitude.

Division 4

Securities for Lessor

§ 305. Right of security of lessor

(1) The lessor of an immovable has the right of security over movables located on the leased immovable and, upon the lease of a room, over movables which are part of furnishings or are used together with the room in order to secure claims arising from a lease contract even if the movables are not in the possession of the lessor. Claims for the rent of the current year and the previous year and claims for compensation shall be secured by a pledge.

(2) The right of security does not extend to things which cannot be the object of a claim.

(3) The rights of third parties to things concerning which the lessor knew or ought to have known that the things do not belong to the lessee and the rights of third parties to things in the possession of the lessee which are stolen from or lost by the owner or previous possessor or of which the owner or previous possessor is dispossessed in any other manner against the will thereof shall precede the right of security of the lessor.

(4) The provisions of the Law of Property Act (RT I 1993, 39, 590; 1999, 44, 509; 2001, 34, 185; 52, 303; 93, 565; 2002, 47, 297; 53, 336; 2003, 13, 64; 17, 95; 78, 523) concerning security over movables apply to the right of security of lessors, unless otherwise provided in this Division.

§ 306. Extinction of right of security

(1) The right of security of a lessor extinguishes with the removal of a thing from a leased immovable, unless the thing is removed without the knowledge of the lessor or the lessor contests the removal of the thing.

(2) A lessor shall not contest the removal of a thing if the removal corresponds to the regular management of the immovable or the daily living arrangements or if the remaining things are sufficient security for the lessor.

(3) The right of security of a lessor extinguishes when the lessee gives the lessor another security in order to secure performance of the obligations of the lessee. The right of security of a lessor over a thing extinguishes if the lessee gives the lessor another security which is equal to the value of the thing.

(4) If, during the term of a lease contract, the lessor learns that things brought into the premises by the lessee do not belong to the lessee and the lessor does not cancel the lease contract at the earliest opportunity, the right of security over these things extinguishes.

§ 307. Exercise of right of security

(1) If a lessee wants to move out or to remove things from the premises, the lessor may withhold things to the extent which is necessary in order to secure the claims of the lessor. The lessor may use self-help in order to exercise the right of security.

(2) If things are removed from an immovable without the knowledge of the lessor or regardless of the fact that the lessor contested the removal of the things beforehand, the lessor may reclaim the things in order to return them to the premises. If the lessee has moved out, the lessor may demand that the possession of the removed things be transferred to the lessor.

(3) The right of security extinguishes one month after the lessor becomes aware of the removal of the thing unless the lessor has filed an action for reclamation of the thing before.

§ 308. Deposit

(1) A residential lease contract may prescribe that the lessee pays a deposit in the amount of up to three months' rent to the lessor in order to secure claims arising from the contract. The lessee may pay the deposit within three months in equal instalments. The first instalment shall be paid after entry into the lease contract.

(2) The deposit shall be kept by the lessor in a credit institution separately from the assets of the lessor and at least at the local average interest rate. The interest belongs to the lessee and increases the deposit.

(3) The lessee may demand repayment of a deposit if the lessor does not inform the lessee of a claim of the lessor against the lessee within two months after expiry of the lease contract.

Division 5

Duration and Expiry of Lease Contract

§ 309. Duration of lease contract

(1) A lease contract entered into for a specified term expires upon expiry of the term unless the contract is extraordinarily cancelled earlier. The lessee and the lessor may cancel a lease contract entered into for an unspecified term according to the provisions of this Chapter.

(2) Withdrawal from a lease contract is permitted only in the cases provided for in this Chapter.

(3) Any agreement according to which the lessor of a dwelling has the right to cancel a lease contract entered into for an unspecified term on bases other than those specified in this Act is void.

(4) If a residential lease contract is entered into with a resolutive condition, the lease contract is deemed to have been entered into for an unspecified term after fulfilment of the condition. Upon fulfilment of the condition, the lessor may cancel the contract by adhering to the terms provided for in § 312 of this Act.

§ 310. Extension of lease contract entered into for specified term

(1) If, after expiry of the term of a lease contract, the lessee continues to use the thing, the lease contract is deemed to have become a lease contract entered into for an unspeci-

fied term unless the lessor or lessee expresses some other intention to the other party within two weeks. The term for the expression of such intention shall commence for the lessee as of expiry of the lease contract and for the lessor as of the time when the lessor learns that the lessee is continuing to use the thing.

(2) If, in the case of a residential lease contract entered into for a term of at least two years, neither party gives notification at least two months before expiry of the term that the party does not wish to extend the contract, the lease contract becomes a lease contract entered into for an unspecified term after expiry of the term.

§ 311. Ordinary cancellation of lease contract entered into for unspecified term

(1) Parties may cancel a lease contract entered into for an unspecified term by adhering to the terms provided for in § 312 of this Act. If the parties have agreed on a longer term for cancellation, they shall adhere to that term.

(2) If, upon cancellation, a party does not adhere to the term prescribed for cancellation, the contract is deemed to have been cancelled after expiry of the prescribed term.

§ 312. Terms for ordinary cancellation of lease contract for unspecified term

(1) Upon the lease of immovables, dwellings or business premises, ships entered in the ship register or aircraft entered in the Estonian aircraft register, either party may cancel a lease contract entered into for an unspecified term by giving at least three months' notice.

(2) Upon the lease of furnished rooms or separately leased parking places, places in garages and the like, a lease contract entered into for an unspecified term may be cancelled by giving at least one month's notice.

(3) Upon the lease of movables not specified in subsection (1) of this section, either party may cancel a lease contract entered into for an unspecified term by giving at least three days' notice.

§ 313. Extraordinary cancellation of lease contract

(1) Either party may, with good reason, cancel a contract entered into for an unspecified term and a contract entered into for a specified term. A reason is good if, upon the occurrence thereof, a party who wishes to cancel cannot be presumed to continue performing the contract taking into account all the circumstances and considering the interests of both parties.

(2) Extraordinary cancellation is permitted mainly under the circumstances specified in §§ 314-319 of this Act.

(3) Advance notice of extraordinary cancellation is not required unless otherwise provided by law.

§ 314. Extraordinary cancellation of lease contract if lessee cannot use leased thing

(1) If a lessee cannot use a leased thing for a reason dependent on the lessor, the lessee may cancel the lease contract if the lessee has already granted the lessor a reasonable term to enable the thing to be used and the lessor has not enabled the lessee to use the thing within that term. The lessee need not grant a term for cancellation of the contract to the lessor beforehand if the lessee is no longer interested in performance of the contract due to the circumstances which cause the cancellation.

(2) If the possibility for a lessee to use a thing is restricted only to an insignificant extent, the lessee may cancel the contract for that reason only if there is a particular reason for cancellation of the contract.

§ 315. Extraordinary cancellation of lease contract upon non-stipulated use of thing

(1) A lessor may cancel a lease contract if:

1) the lessee or sublessee of the thing violates the obligations provided for in subsections 276 (2) or (3) of this Act regardless of any prior warning given by the lessor;

2) the lessee or sublessee of the thing violates the obligations specified in subsections 276 (2) or (3) of this Act materially or intentionally;

3) the lessee grants the use of the thing to a third party without authorisation therefor and if, as a result, the lessor or neighbours are so affected that the lessor cannot be expected to continue the lease contract.

(2) The lessor of dwellings or business premises may cancel a lease contract in the cases specified in subsection (1) of this section by giving at least thirty days' notice. If the lessee or sublessee damages the dwellings or business premises intentionally, the term for cancellation need not be adhered to.

§ 316. Extraordinary cancellation of lease contract due to delay in payment

(1) A lessor may cancel a lease contract if:

1) the lessee is in delay for rent subject to payment, accessory expenses or a significant share thereof on three consecutive due dates;

2) the amount of rent due exceeds the amount of rent subject to payment for three months;

3) the amount of the accessory expenses due exceeds the amount of accessory expenses subject to payment for three months.

(2) A lessor does not have the right of cancellation specified in subsection (1) of this section if the lessee performs the obligations thereof before cancellation. Cancellation is void if the lessee had the right to set off the lease claim and the lessee submits an application for set-off promptly after receipt of a declaration of cancellation.

§ 317. Extraordinary cancellation of lease contract due to health hazard related to dwelling

Either party may cancel a residential lease contract if the dwelling is in such a condition that the use thereof may involve significant hazard to human health.

§ 318. Cancellation of long-term lease contract

(1) Either party may cancel a lease contract entered into for longer than thirty years after thirty years by adhering to the terms provided for in § 312 of this Act.

(2) The provisions of subsection (1) of this section do not apply if a lease contract is entered into for the life of the lessor or lessee.

§ 319. Extraordinary cancellation of lease contract due to bankruptcy of lessee

(1) If the lessee is declared bankrupt, the lessor may demand security for payment of the future rent and accessory expenses. The lessor shall grant a reasonable term for providing security. The notice for granting the term shall be in a format which can be reproduced in writing.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) If security is not given to a lessor within the term specified in subsection (1) of this section, the lessor may cancel the contract without adhering to the term for cancellation.

§ 320. Validity of lease contract upon death of party

A lease contract is not terminated upon the death of a party unless the parties have agreed otherwise.

§ 321. Taking place of lessee in lease contract upon death of lessee

(1) Upon the death of a lessee of a dwelling, the spouse who lived in the dwelling together with the lessee has the right to take the place of the lessee in the lease contract. If the lessee did not have a spouse who has the right or who wishes to take the place of the lessee in the lease contract, other family members who lived in the dwelling together with the lessee have the right to take the place of the lessee in the lease contract pursuant to an agreement between them.

(2) A spouse or other family member may take the place of the lessee in a lease contract within one month as of the death of a lessee by submitting a corresponding notice to the lessor.

(3) If several family members take the place of the lessee in a lease contract, they can exercise the rights arising from the contract only jointly and they shall be solidarily liable for performance of the obligations arising from the contract. A spouse or family member who takes the place of the lessee in a lease contract shall be solidarily liable with the successor of the lessee for obligations which have arisen from the contract before the death of the lessee. In the relations between the spouse or family member and the successor, the successor shall be solely liable.

(4) If the lessee has paid the rent in advance for a period of time extending beyond his or her death and if his or her spouse or a family member take the place of the lessee in the lease contract, the spouse or family member is required to return to the successor the amount which he or she obtained or saved as a result of the advance payment.

(5) If the spouse or a family member of the lessee does not take the place of the lessee in the lease contract, the rights and obligations arising from the lease contract transfer to the successor of the lessee. In such case, the lessor or the successor of the lessee may cancel the lease contract within three months as of the death of the lessee by giving at least three months' notice.

(6) After the death of one lessee, a residential lease contract entered into jointly by lessees is valid with regard to the other lessee. The surviving lessee may cancel the lease contract within three months as of the death of the other lessee by giving at least three months' notice.

(7) Agreements which derogate from the provisions of subsections (1)-(6) of this section are void.

§ 322. Extraordinary cancellation of lease contract of movable entered into for specified term

(1) A lessee of a movable may cancel a lease contract entered into for a specified term by giving thirty days' notice if the movable is leased for purposes other than those related to the economic or professional activities of the lessee and the lessor has leased the movable as part of the economic or professional activities thereof. The lessor does not have the right to claim compensation for any damage caused by such cancellation.

(2) Agreements which derogate from the provisions of subsection (1) of this section to the detriment of the lessee are void.

§ 323. Cancellation of lease contract upon transfer of rights and obligations of lessor

(1) Upon the transfer of rights and obligations arising from a lease contract to a new lessor due to the transfer or encumbrance of a leased thing (§ 291 of this Act), the new lessor may cancel the lease contract within three months by adhering to the terms for cancellation provided for in § 312 of this Act unless the contract can be terminated earlier. The acquirer may cancel a residential lease contract or a lease contract of business premises for such reason only if the acquirer urgently needs the leased premises.

(2) If, in the case specified in subsection (1) of this section, the new lessor cancels a lease contract entered into for a specified term before expiry of the term of the contract, the previous owner shall be liable for any damage caused by termination of the contract to the lessee.

(3) The provisions of subsections (1) and (2) of this section also apply if the acquirer of a leased thing transfers the thing further.

§ 324. Notations in land register

(1) The lessee of an immovable may demand that a notation regarding the lease contract be made in the land register.

(2) A notation entered in the land register ensures that the actual owner of an immovable or a person for whose benefit the immovable is encumbered with a limited real right shall permit the lessee to use the immovable pursuant to the lease contract and that a new owner does not have the right to cancel the lease contract pursuant to the provisions of § 323 of this Act.

§ 325. Form of cancellation of residential lease contracts and lease contracts of business premises

(1) The lessor and the lessee may cancel a residential lease contract or a lease contract of business premises with a declaration of cancellation which is submitted in a format which can be reproduced in writing.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) A declaration of cancellation submitted by a lessor shall contain at least the following information:

1) the leased thing;

2) the date of termination of the contract;

3) the bases for cancellation;

4) in case of cancellation of a residential lease contract, the procedure and limitation period for contestation of the cancellation.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(3) In order to cancel a residential lease contract, the lessee requires the consent of his or her spouse who is living together with him or her in the leased dwelling and the consent shall be in a format which can be reproduced in writing.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(4) If the consent of the spouse specified in subsection (3) of this section cannot be obtained or if the spouse refuses to grant consent without good reason, the lessee may demand the consent of the spouse in court. In such case, a court judgment which satisfies the action shall replace consent.

(5) Cancellation which does not comply with the requirements provided for in subsections (1)-(4) of this section is void.

§ 326. Contestation of cancellation of residential lease contracts and extension of lease contracts

(1) A lessee of a dwelling may contest the cancellation of the lease contract by the lessor in a lease committee or court if the cancellation is contrary to the principle of good faith.

(2) Upon cancellation of a lease contract by the lessor or expiry of the term of a lease contract entered into for a specified term, the lessee of the dwelling may demand that the lessor extend the lease contract for up to three years if termination of the contract would result in serious consequences for the lessee or his or her family. If the lessor does not consent to the extension of the contract, the lessee may demand extension of the lease contract in a lease committee or court.

§ 327. Cancellation of residential lease contract contrary to principle of good faith

(1) The cancellation of a residential lease contract by the lessor is contrary to the principle of good faith if, above all, the lessor cancels the contract for one of the following reasons:

1) the lessee files a claim arising from the lease contract in good faith;

2) the lessor wishes to amend the lease contract to the detriment of the lessee and the lessee does not consent thereto;

3) the lessor wishes to induce the lessee to acquire the leased dwelling;

4) the marital status of the lessee changes, although this does not result in any significantly harmful consequences for the lessor.

(2) The cancellation of a residential lease contract by the lessor is contrary to the principle of good faith if the lessor cancels the contract during a period when proceedings are being conducted concerning the lease contract in a lease committee or court, or before three years have passed from the termination of proceedings concerning the lease contract in a lease committee or court if the decision or judgment was made to the detriment of the lessor.

(3) In the cases specified in subsection (2) of this section, the cancellation of a lease contract by the lessor is not contrary to the principle of good faith if the lessor cancels the contract with good reason, above all for one of the following reasons:

1) the lessee initiated the current proceedings in bad faith;

2) the lessor urgently needs the dwelling;

3) the lessee has arrears;

4) the lessee materially violates the obligations regarding prudence and the taking into account of the interests of others (subsections 276 (2) and (3) of this Act);

5) the lessee is declared bankrupt.

§ 328. Restrictions on extension of residential lease contract

(1) An application from the lessee of a dwelling for extension of the lease contract specified in subsection 326 (2) of this Act shall not be satisfied if extension of the lease contract is contrary to the legitimate interests of the lessor, above all for the following reasons:

1) the lessee owes rent or accessory expenses;

2) the lessee has materially violated an obligation specified in subsections 276 (2) or (3) of this Act;

3) the lessor cancels the lease contract on the basis specified in subsection 319 (2) of this Act;

4) taking into account future reconstruction work, the lease contract is entered into for a specified term until the commencement of the work or receipt of a building permit;

5) the lessor offers another equivalent dwelling to the lessee;

6) the lease contract may be cancelled without advance notice for any other reason.

(2) Upon deciding on the extension of a lease contract and considering the interests of the parties, the court and lease committee shall take, inter alia, the following into account:

1) the circumstances relating to entry into the lease contract and the content of the contract;

2) the duration of the lease contract;

3) the personal, family and economic relations of the parties;

4) the need of the lessor to use the dwelling;

5) the situation on the local residential market.

(3) If the lessee repeatedly demands extension of the lease contract, the fact of whether the lessee has done all that is reasonable in order to find new housing shall also be taken into account.

§ 329. Procedure for contestation of cancellation and for extension of contract

(1) In order to contest cancellation of a residential lease contract pursuant § 326 of this Act, the lessee shall submit an application to a lease committee or court within thirty days as of the receipt of the declaration of cancellation.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(2) In order to extend a residential lease contract entered into for an unspecified term which is cancelled by the lessor, the lessee shall submit an application to a lease committee or court within thirty days as of the receipt of the notice of cancellation.

(3) In order to extend a residential lease contract entered into for a specified term or a contract which has already been extended by a lease committee or court, the lessee shall submit an application not later than sixty days before expiry of the term of the contract.

(4) During proceedings in a lease committee or court, the lease contract is valid under the conditions applicable up to that time unless otherwise agreed by the parties.

(5) If a lease committee or court has declared the cancellation of a lease contract to be contrary to the principle of good faith, the lease contract is deemed not to have been cancelled.

§ 330. Amendment of terms and conditions of contract upon extension of residential lease contract

(1) Either party to a residential lease contract may, in a lease committee or court, request that the terms and conditions of the contract be amended together with the extension of the contract in accordance with the changed circumstances.

(2) If the terms and conditions of the contract are not amended, the contract is valid

throughout the extended term under the former terms and conditions. This does not preclude any other possibilities arising from law to amend the contract.

§ 331. Cancellation upon extension of residential lease contract

If a lease committee or court extends a residential lease contract, the lessee may exercise the right of extraordinary cancellation by giving at least two months' notice, unless the decision of the lease committee or the court judgment prescribes a different term for cancellation.

§ 332. Contestation of cancellation of sublease contract and extension of contract

(1) The provisions of §§ 326-331 of this Act also apply to sublease contracts unless the lease contract is terminated.

(2) A sublease contract shall not be extended for a period of time exceeding the duration of the lease contract.

§ 333. Application of provisions to residential lease contract of employer's dwelling

The provisions of §§ 326-332 of this Act do not apply to a residential lease contract which is entered into between an employer or mandator as a lessor and an employee, mandatary or public servant as a lessee if:

1) the lessee has terminated the employment contract, authorisation agreement or service relationship without the employer or mandator having provided the lessee with a basis therefor arising from law;

2) the lessee has, by his or her behaviour, provided the employer or mandator with a basis arising from law for the termination of the employment contract, authorisation agreement or service relationship;

3) the lessor urgently needs the dwelling for another employee, mandatary or public servant.

Division 6

Return of Leased Thing upon Expiry of Contract and Claims

§ 334. Return of leased thing

(1) A lessee shall return a leased thing together with its accessories in a condition which conforms to the contractual use after the expiry of the contract. If, upon delivery of the leased thing to the lessee, an instrument of delivery concerning the thing is prepared, the thing is presumed to have been delivered in the condition set out in the instrument of delivery.

(2) The lessee shall be liable for the destruction and loss of and damage to a leased thing which occurs when the thing is in the possession of the lessee unless the lessee proves that the destruction, loss or damage occurred under circumstances which were not caused by the lessee or the person to whom the lessee transferred use of the thing in compliance with the contract. The lessee shall not be liable for the natural wear or deterioration of the thing or changes which accompany the contractual use.

(3) If a lessee has incurred expenses with respect to a movable for which the lessee can claim compensation, the thing may be withheld by the lessee until the expenses are reimbursed.

(4) Any agreement according to which the lessee, before termination of a lease contract, undertakes to pay compensation other than possible compensation for damage upon expiry of the lease contract is void.

(5) If the lessee transfers the right to use the thing to a third party, the lessor may, after expiry of the contract, demand the return of the thing even from the third party.

(6) A movable shall be returned at the place at which it was delivered, unless agreed otherwise.

§ 335. Claims arising from delay in return of leased thing

If a lessee does not return a thing after termination of the contract, the lessor may demand the rent agreed in the lease contract or rent which is usual in the case of a similar thing in a similar location as compensation for damage for the period of delay, unless the lessee justifiably withholds the thing in order to ensure payment for the expenses incurred thereby. This does not preclude the right of the lessor to demand compensation for damage caused to the lessor by the delay in the return of the thing in an amount which exceeds the amount of rent.

§ 336. Inspection of thing and giving of notification of defects to lessee

(1) Upon return of a leased thing, the lessor shall inspect the condition of the thing and promptly notify the lessee of any defects for which the lessee is responsible. If the lessor fails to do this, the lessor loses the rights which belong thereto based on the defects of the thing, unless these are defects which cannot be identified by ordinary inspection.

(2) If the lessor subsequently identifies a defect of the thing which cannot be identified by ordinary inspection, the lessor shall promptly notify the lessee thereof. In the event of failing to give notification of a defect of a thing, the lessor loses the rights based on the defect.

§ 337. Repayment of rent and accessory expenses paid in advance

If a lessee has paid rent or accessory expenses in advance for the period after expiry of lease contract, the lessor shall repay the advance payment to the lessee together with the interest provided for in § 94 of this Act.

§ 338. Expiry of claims

(1) The limitation period of a claim by a lessor for compensation for alteration or deterioration of a leased thing and a claim by a lessee for compensation for expenses incurred in relation to a thing or for removal of alterations is six months.

(2) The limitation period of a claim of a lessor for compensation shall commence as of the return of the thing. The limitation period of the claims of a lessee shall commence as of the termination of the contract.

(3) The limitation period of a claim of a lessor for compensation for alteration or deterioration of a leased thing shall expire together with a claim for the return of the thing.

Chapter 16

Commercial Lease Contract

Division 1

General Provisions

§ 339. Definition of commercial lease contract

By a commercial lease contract, one person (the commercial lessor) undertakes to grant the use of the object of the commercial lease contract to another person (the commercial lessee) and enables the fruits received from the object of the commercial lease contract to be enjoyed under the rules of regular management. The commercial lessee is required to pay a fee (rent) therefor.

§ 340. Agricultural lease contract

(1) Enterprises designated mainly for agricultural production, including non-agricultural

enterprises connected with agricultural production, agricultural immovables or parts thereof, may be the objects of an agricultural lease contract. Upon the lease of an agricultural immovable, the lease contract is presumed to include the accessories and rights relating to the immovable.

(2) The provisions concerning agricultural lease contracts also apply to commercial lease contracts regarding immovables intended for forestry use if such immovables are part of the assets of the leased agricultural enterprise.

(3) The provisions concerning agricultural lease contracts do not apply to commercial lease contracts the object of which is a plot of land with an area of less than two hectares.

(4) Agreements which derogate from the provisions of this Chapter to the detriment of the commercial lessee of an agricultural immovable or enterprise are void.

§ 341. Application of provisions concerning lease contracts to commercial lease contracts

The provisions concerning lease contracts also apply to commercial lease contracts unless the provisions of this Chapter provide otherwise.

Division 2

Rights and Obligations of Parties

§ 342. Description of immovable subject to commercial lease

(1) Upon transfer of an immovable after entry into or expiry of a commercial lease contract, the commercial lessor and the commercial lessee of the immovable shall jointly prepare a description of the immovable which describes the parts, accessories and condition of the immovable upon transfer. The description shall set out the time of preparation of the description and it shall be signed by both parties.

(2) If one party refuses to participate in the preparation of a description or if material disagreements arise upon preparation of the description, either party may demand that an expert prepares the description, unless more than nine months have passed since the transfer of the immovable or more than three months have passed since the expiry of the commercial lease contract. The parties shall bear the costs of the expert's fees in equal shares.

(3) In the case of preparation of a description specified in subsection (1) of this section, the description is deemed to be correct in relations between the parties. If a description is not prepared, the immovable is deemed to have been transferred in good condition.

§ 343. Commercial lessor's right to check

A commercial lessor has the right to check the management of the object of the commercial lease contract and that the maintenance thereof is ensured.

§ 344. Obligation to manage according to intended purpose

A commercial lessee shall manage the object of the commercial lease contract according to its intended purpose, particularly by preserving the economic purpose of the object of the commercial lease contract and using the object in a regular manner and prudently.

§ 345. Removal of defects

(1) The commercial lessee shall ensure the ordinary maintenance of the object of the commercial lease contract at the expense of the commercial lessee, particularly by removing defects which can be removed by cleaning or repair as part of ordinary preservation, and by carrying out customary small repairs and replacing equipment and tools of low value if, due to their age or use, they have become unusable.

(2) The commercial lessee of an agricultural immovable or enterprise shall, inter alia, ensure the ordinary maintenance of equipment necessary for the use and servicing of roads, tracks, ditches, dams, roofs, fences, water conduits and other objects of the commercial lease contract according to local custom.

§ 346. Commercial lease of immovable with accessories

(1) Upon the commercial lease of an immovable with accessories, the commercial lessee shall preserve the accessories and replace any destroyed or lost accessories even if they are destroyed or lost through no fault of the lessee. The commercial lessee shall replace animals forming part of the accessories that have become unfit for service by regular use in so far as this conforms to regular management.

(2) The commercial lessee shall preserve the accessories in a condition which conforms to regular management practice and replace accessories to this extent as and when necessary. Accessories replaced by the commercial lessee shall be transferred into the ownership of the commercial lessor.

(3) A condition of a contract which prohibits the commercial lessee from disposing of things forming part of the accessories or allows this to be done only with the consent of the commercial lessor or requires the accessories to be transferred to the commercial lessor is valid only if the commercial lessor undertakes to acquire the accessories at least at their usual value upon expiry of the commercial lease contract.

§ 347. Care for leased animals

(1) The commercial lessee shall bear the costs of feeding and caring for leased animals.

(2) The commercial lessee shall be liable for any damage caused to a leased animal unless the lessee proves that the damage could not have been prevented by the commercial lessee, regardless of the regular feeding and care.

(3) The commercial lessee may demand reimbursement of expenses incurred in relation to the extraordinary care of an animal from the commercial lessor unless these expenses are caused by circumstances dependant on the commercial lessee.

§ 348. Alterations and improvements made by commercial lessor of agricultural immovable or enterprise

(1) In the case of an agricultural lease contract, the commercial lessee shall tolerate the measures taken by the commercial lessor to alter or improve the object of the commercial lease contract. The commercial lessee need not tolerate such measures if they have consequences which are not justified taking into account the legitimate interests of the commercial lessor. The commercial lessor shall compensate the commercial lessee to a reasonable extent for the expenses caused by application of the measures and for the loss of profit. At the request of the commercial lessee, the commercial lessor shall pay the compensation in advance.

(2) If the commercial lessee receives more profit due to measures specified in the first sentence of subsection (1) of this section or could receive such profit by regular management, the commercial lessor may increase the rent to the same extent unless payment of a larger amount of rent cannot be expected from the commercial lessee in the circumstances. Any increase in the rent does not enter into force before the profit actually increases.

§ 349. Change of way of management

(1) The commercial lessee may change the regular way of managing the object of a commercial lease contract and may make alterations and improvements to the object of the commercial lease contract which exceed ordinary maintenance only with the consent of the commercial lessor provided in a format which can be reproduced in writing. If the commercial lessor consents to the alterations and improvements, the commercial lessor may demand the restoration of the former situation only if the obligation to restore was agreed on in a format which can be reproduced in writing.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) If a commercial lessor has not consented to changing the regular way of management in a format which can be reproduced in writing and if the commercial lessee does not restore the previous way of management within a reasonable period, the commercial lessor may cancel the commercial lease contract without advance notice. In the case of business

premises, the contract may be cancelled for that reason by giving at least thirty days' notice.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) If the commercial lessor refuses to grant consent specified in subsection (1) of this section, the commercial lessee may apply for the grant thereof by a court proceeding if the changes are necessary in order to maintain or bring about a long-term improvement in the profitability of the enterprise and if the commercial lessor may be expected to grant consent taking into account the legitimate interests of the commercial lessor. The grant of consent shall not be demanded if the commercial lease contract has been cancelled or the contract expires within less than three years.

(4) In the case specified in subsection (3) of this section, a court judgment which satisfies an action shall replace consent.

§ 350. Amendment of terms of agricultural lease contract

(1) The amendment of an agricultural lease contract shall not be demanded on the bases and under the conditions provided for in § 97 of this Act before two years have passed since entry into the commercial lease contract or the last amendment thereof. This restriction does not apply if relations between the parties change significantly and permanently due to *force majeure*.

(2) If, in the case of an agricultural lease contract, the rent is unreasonably high, the commercial lessee may, taking into account the profit received upon regular management of the object of the commercial lease contract, demand a reduction of the rent by a reasonable amount as of the due date for payment of the rent following submission of the application for a change of the rent. The commercial lessee shall not demand a reduction of the rent if the value of the thing has changed as a result of the activities of the lessee unless such right has been agreed upon.

(3) Any agreement whereby the commercial lessee or commercial lessor waives the right to apply for amendment of a contract is void.

§ 351. Right of security of commercial lessor of agricultural immovable or enterprise

The commercial lessor of an agricultural immovable or enterprise has the right of security over things brought into the immovable or the enterprise by the lessee and over the fruits of the object of the commercial lease contract in order to secure the claims of the lessor arising from the commercial lease contract. The right of security does not secure future claims for compensation.

Division 3

Duration and Expiry of Commercial Lease Contract

§ 352. Extension of agricultural lease contract

If, in the case of an agricultural lease contract entered into for at least three years, neither party gives notification at least two months before the expiry of the contract that the party does not wish to extend the contract, the contract is presumed to have become an agricultural lease contract entered into for an unspecified term after expiry of the term. Agreements which derogate from this to the detriment of the commercial lessee are void.

§ 353. Ordinary cancellation of commercial lease contract entered into for unspecified term

(1) The parties may cancel a commercial lease contract entered into for an unspecified term by giving at least six months' notice.

(2) The parties may cancel an agricultural lease contract entered into for an unspecified term by giving at least one year's notice. The contract may be cancelled only such that it expires on 1 April or 1 October.

(3) Either party may at any time cancel an animal lease contract entered into for an unspecified term and not linked to an agricultural lease contract. Cancellation shall take place in good faith and not at a time unsuitable for the other party.

§ 354. Form of cancellation

The cancellation of an agricultural lease contract or a commercial lease contract of premises is valid only if it is prepared in a format which can be reproduced in writing.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

§ 355. Cancellation in event of incapacity for work of commercial lessee of agricultural immovable

If, in the case of an agricultural lease contract, the commercial lessee becomes permanently incapacitated for work, the commercial lessee may cancel the commercial lease contract by giving at least one month's notice.

§ 356. Death of commercial lessee in agricultural lease contract

(1) If, in the case of an agricultural lease contract, the commercial lessee dies, the

spouse who lived together with the commercial lessee may take the place of the commercial lessee in the agricultural lease contract. If the commercial lessee did not have a spouse who lived together with him or her or the spouse does not wish to take the place of the commercial lessee in the agricultural lease contract, other successors have the right to take the place of the commercial lessee in the agricultural lease contract pursuant to an agreement between them.

(2) The spouse or other successors of a commercial lessee may take the place of the commercial lessee in an agricultural lease contract within one month as of the death of the commercial lessee by submitting a corresponding notice to the commercial lessor.

(3) If the person who takes the place of a party to an agricultural lease contract is evidently unable to manage the object of the commercial lease contract in a regular manner or if the commercial lessor cannot be expected to continue the commercial lease contract for other reasons, the commercial lessor may cancel the contract within thirty days as of receipt of a notice concerning the fact that the person will take the place of the party to the contract.

(4) If the spouse of the commercial lessee or any other entitled person does not take the place of the commercial lessee in the contract, the successors of the commercial lessee or the commercial lessor may cancel the commercial lease contract and shall give at least six months' notice thereof in a format which can be reproduced in writing.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

§ 357. Extension of agricultural lease contract at request of commercial lessee

(1) Upon the cancellation of an agricultural lease contract by the commercial lessor, the commercial lessee may demand the extension of the contract by a court proceeding within three months as of the receipt of the notice concerning cancellation, if extension could have been expected on the part of the commercial lessor. A commercial lessee shall submit an application to a court for extension of a commercial lease contract entered into for a specified term nine months before the expiry of the contract.

(2) The commercial lessor shall prove that the commercial lessor cannot be expected to extend the contract. Extension of the commercial lease contract cannot be expected from the commercial lessor particularly:

1) if the commercial lessee has materially violated the obligations thereof arising from law or the contract;

2) upon insolvency of the commercial lessee;

3) if the commercial lessor, his or her spouse, close relative or close relative by marriage wishes to manage the object of the commercial lease contract himself or herself;

4) if the agricultural enterprise is not worth maintaining;

5) if the planning prescribes that the immovable will be used in a different manner.

(3) A court shall decide on the extension of a commercial lease contract for not longer than six years. Upon determination of the term for extension, the personal situation of the parties, the type of object of the commercial lease and other relevant circumstances shall be taken into account.

(4) Upon deciding on the extension of a commercial lease contract, the court may, at the request of either party, amend the commercial lease contract in order to bring the contract into conformity with the changed circumstances.

§ 358. Return of object of commercial lease contract

(1) After expiry of a commercial lease contract, the commercial lessee shall return the object of the commercial lease contract together with the accessories. The object of the commercial lease contract and the accessories shall be returned in a condition corresponding to regular management having been continued until the return of the object of the commercial lease contract.

(2) The commercial lessee shall pay reasonable compensation to the commercial lessor for any deterioration of the object of the commercial lease contract which could have been avoided by the commercial lessee by regular management.

§ 359. Reimbursement of expenses to commercial lessee

(1) If, upon expiry of a commercial lease contract, it becomes evident that the value of the object of the commercial lease contract has permanently and considerably increased due to improvements or alterations made with the consent of the commercial lessor, the commercial lessee may demand reasonable compensation therefor.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(2) The commercial lessee may demand compensation for any increase in the value of the accessories if the increase occurs due to work performed or expenses incurred by the commercial lessee. The commercial lessor may refuse to accept accessories created by the commercial lessee which, under the rules of regular management, are useless or too valuable for the immovable.

(3) Expenses other than those specified in subsections (1) and (2) of this section shall be reimbursed by the commercial lessor only if the commercial lessor is required to do so pursuant to the provisions regarding *negotiorum gestio*.

§ 360. Fruits of agricultural immovable

(1) The commercial lessee of an agricultural immovable does not have the right to fruits unsevered as of the expiry of the commercial lease contract, although the commercial les-

see may demand reimbursement of any expenses incurred to obtain the fruits.

(2) The provisions of subsection (1) of this section also apply to trees not yet cut but subject to cutting. If the commercial lessee has cut more trees than necessary for regular management, the commercial lessee shall reimburse the cost of the timber to the commercial lessor to the extent which exceeds regular management.

Chapter 17

Leasing Contract

§ 361. Definition of leasing contract

By a leasing contract, the lessor undertakes to acquire a certain object (the object of leasing) from a seller determined by the lessee and to grant use of the object to the lessee, and the lessee is required to pay a fee for use of the object of leasing.

§ 362. Obligations of lessor

(1) The lessor is required to ensure transfer of the possession of the object of leasing to the lessee and not to hinder the lessee upon possession or use of the object of leasing.

(2) The lessee may withdraw from the contract if the object of leasing is not delivered to the lessee within the term prescribed in the contract or, in the absence of such an agreement, within a reasonable period of time, and if the delay is caused by circumstances dependant on the lessor.

(3) The lessor is not liable to the lessee if the object of leasing does not conform to the contract unless:

1) the object of leasing or the seller thereof was selected by the lessor;

2) the lessee is a natural person and damage arising from reasonable belief in the professionalism of the lessor is caused to the lessee, particularly if the lessor specialises in leasing certain objects.

§ 363. Obligations of lessee

A lessee is required to:

1) use the object of leasing with prudence and according to the intended purpose thereof which was the basis for entry into the leasing contract or, in the absence of such an

agreement, according to its ordinary purpose;

2) maintain the object of leasing in the condition in which it is delivered to the lessee, except for changes resulting from the use of the object of leasing for its intended purpose;

3) return, upon termination of the contract, the object of leasing to the lessor in the condition specified in clause 2) of this section, unless the lessee exercises the contractual right thereof to acquire the object of leasing.

§ 364. Transfer of risk of accidental loss or damage

The risk of accidental loss of or damage to an object of leasing transfers to the lessee upon delivery of the object of leasing to the lessee.

§ 365. Liability of seller

(1) A lessee may make a claim of a lessor as a purchaser directly against the seller if the claim arises from violation of the contract of sale entered into with the lessor. Upon filing such claim, the lessee has all the rights and obligations of the purchaser, except the obligation to pay for the object and the right to demand the transfer of the ownership of the object.

(2) A lessee has the right to exercise the right of a lessor to withdraw from a contract of sale entered into with a seller only with the consent of the lessor.

§ 366. Cancellation in event of defects or destruction of object of leasing

If the object of leasing is destroyed or becomes unusable or if the lessee exercises the right, arising from the contract of sale entered into with the seller instead of the lessor, to withdraw from the contract, the lessor and the lessee may both cancel the leasing contract without advance notice.

§ 367. Consequences of cancellation

(1) Upon cancellation of a leasing contract, the lessee shall reimburse all expenses borne by the lessor in connection with the object of leasing to the lessor, particularly the purchase price of the object of leasing and the costs of financing the purchase price to the extent to which these are not covered by the leasing payments already paid.

(2) Determination of the expenses specified in subsection (1) of this section shall be based on the amount of the leasing payments to be paid by the lessee after cancellation, from which interest arising from the contract and other amounts which are not related to the expenses incurred for acquisition of the object of leasing shall be deducted.

(3) If the object of leasing remains in the ownership of the lessor after the cancellation of the leasing contract, the value of the object of leasing at the time of return of the object to the lessor shall be taken in account upon determining the amount of the claim for reimbursement of expenses provided for in subsection (1) of this section.

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(4) A lessee shall reimburse any additional expenses caused by cancellation to the lessor, unless the cancellation is caused by circumstances dependant on the lessor.

Chapter 18

Licence Agreement

§ 368. Definition of licence agreement

By a licence agreement, one person (the licensor) grants another person (the licensee) the right to exercise the rights arising from intellectual property to the agreed extent and on the agreed territory, and the licensee undertakes to pay a fee (the licence fee) therefor.

§ 369. Prerequisites for validity of right of use

(1) In the cases provided by law, it is necessary, in order for the right of use arising from a licence agreement to be created, for an entry to be made in a register in which the property concerning which the agreement is entered into has been entered.

(2) The licensee shall exercise the rights arising from a licence agreement if the licensor has a legitimate interest in the rights arising from the licence agreement being exercised, particularly if the existence of the rights arising from the licence agreement depends on the exercise of these rights.

§ 370. Non-exclusive licence agreement and exclusive licence agreement

(1) In the case of a non-exclusive licence agreement, the licensor may also exercise the right which is the object of the agreement or grant the right of use to other persons besides the licensee.

(2) An exclusive licence agreement grants the licensee the right to exercise the rights arising from intellectual property to the agreed extent and precludes the right of use of other persons and of the licensor to the same extent.

(3) If the right of use to which a licence agreement extends is not clearly specified in the

agreement, the extent of the right of use shall be determined pursuant to the objective of the agreement.

(4) The right of use arising from a non-exclusive licence agreement which arises before the right of use arising from an exclusive licence agreement shall remain valid in respect of the person who was granted the right of use on the basis of the exclusive licence agreement.

§ 371. Transfer of right of use arising from licence agreement

(1) It is presumed that the right of use arising from a licence agreement may be transferred only with the consent of the licensor. The licensor shall grant consent if this can be expected of the licensor based on the principle of good faith.

(2) The provisions of subsection (1) of this section do not apply upon transfer of an enterprise if the right of use belongs to the enterprise.

§ 372. Communication of information

(1) The licensor shall deliver documents and communicate information necessary for exercise of the rights pursuant to the agreement to the licensee within a reasonable time after entry into the agreement.

(2) The licensee shall maintain the confidentiality of documents delivered and information communicated to the licensee unless:

1) the licensee communicates the information to persons who work in licensee's enterprise and who are required to maintain the confidentiality of the information;

2) the licensor cannot be expected to intend to maintain the confidentiality of the information based on the agreement or the nature of the delivered documents and communicated information.

(3) After expiry of an agreement, the licensee shall return the documents which have been delivered to the licensee to the licensor and maintain the confidentiality of the received information.

§ 373. Protection of rights

If a third party hinders a licensee when the licensee is exercising the rights thereof arising from a licence agreement or if a third party violates these rights, the licensee shall promptly give notification thereof to the licensor who shall immediately take all necessary measures to enable the rights arising from the licence agreement to be exercised and to terminate the violation of the rights of the licensee. If the licensor takes such measures, the licensee shall

co-operate with the licensor to the necessary extent.

§ 374. Cancellation of agreement entered into for unspecified term

Either party may cancel an agreement entered into for an unspecified term by giving at least one year's notice.

Chapter 19

Franchise Contract

§ 375. Definition of franchise contract

By a franchise contract, one person (the franchisor) undertakes to grant to another person (the franchisee) a set of rights and information which belongs to the franchisor for use in the economic or professional activities of the franchisee, including the right to the trade mark, commercial identifications and know-how of the franchisor.

§ 376. Obligations of franchisor

The franchisor is required to provide the franchisee with instructions for the exercise of the rights thereof and to provide permanent assistance related thereto to the franchisee.

§ 377. Obligations of franchisee

A franchisee is required:

1) in the activities thereof, to use the commercial identifications of the franchisor;

2) to ensure that the quality of the goods manufactured or services provided by the franchisee pursuant to the contract is the same as those manufactured or provided by the franchisor;

3) to follow the instructions of the franchisor which are directed at the exercise of rights on the same bases and in the same manner as the franchisor;

4) to provide clients with all additional services which they could expect upon acquiring goods or contracting for services from the franchisor.

§ 378. Franchisor's right to check

A franchisor has the right to check the quality of the goods manufactured or services provided on the basis of a franchise contract by the franchisee.

Chapter 20

Contract relating to Purchase of Right to Use Buildings on Timeshare Basis

§ 379. Definition of contract relating to purchase of right to use buildings on timeshare basis

(1) By a contract relating to the purchase of the right to use immovables, buildings or parts of buildings (a building) on a timeshare basis, a person who is engaged in professional or economic activities (the vendor) grants or undertakes to grant a consumer the right to use the building over the course of at least three years for a specified or specifiable period of the calendar year. The consumer is required to pay a fee therefor.

(2) The right specified in subsection (1) of this section may be a real right, any other right relating to the use of one or more immovables or buildings, or membership in an association of persons or holding in a company which grants such right of use.

§ 380. Duty to provide consumer with description

(1) A vendor shall provide any interested person requesting information regarding a building or the right of use with a description of the building and the right of use. The description shall contain at least the following information:

1) a general description of the building and the right of use;

2) the name and address of the vendor and the owner of the building, and in the case of a vendor or owner who is a legal person, the name and address of the legal representative thereof;

3) the legal status of the vendor in respect of the building;

4) the exact nature of the right of use which is the object of the contract, including the term for the right of use and the period during the year when the right of use may be exercised;

5) the conditions for the exercise of the right of use in the country where the building is situated and information regarding which conditions have been fulfilled and which conditions remain to be fulfilled in order to obtain the right of use;

6) an explanation that the consumer will not become the owner of the building or ac-

quire the right of use in respect of the building under property law unless the consumer becomes the owner of the building or acquires the right of use thereof;

7) an accurate description of the building and its location if the right of use relates to a particular building;

8) information on the services (lighting, water, building maintenance, telephone, electricity, refuse collection, etc.) at the disposal of the consumer and the conditions for the use thereof;

9) information on the common facilities (swimming pool, sauna, etc.) to which the consumer has access and the conditions for the use thereof;

10) the principles of the maintenance, repair, administration and management of the building;

11) information on the fee payable for the exercise of the right of use and the basis for the calculation of costs relating to occupation of the building, including information on mandatory taxes and fees and on administrative overheads (including management, maintenance and repairs);

12) an estimate of the amount to be paid by the consumer for the use of the common facilities and the services;

13) information on whether or not it is possible to exchange or resell the contractual right of use, and information on any costs involved if an exchange or resale is arranged by the vendor or by a third party;

14) a reference to the right of the consumer to withdraw from the contract pursuant to § 383 of this Act, including the name and address of the person to whom possible withdrawal is to be disclosed, the term for withdrawal, the requirements for format of an application for withdrawal, and an explanation that the term for withdrawal has been adhered to if the application for withdrawal has been sent within that term;

15) the charges which the consumer is required to pay upon withdrawal from the contract;

16) the conditions for termination of a credit contract linked to the contract upon withdrawal from the contract;

17) the way in which the consumer can obtain additional information on the building and the right of use.

(2) If the right of use concerns a building which is being designed or is under construction, the description specified in subsection (1) of this section shall additionally set out the following:

1) information on the state of the construction work and the state of the completion of the services which will render the building fully operational (gas, electricity, water, telephone, etc.);

2) a reasonable estimate of the time for completion of the building;

3) information concerning the existence of a building permit, and the name and address of the administrative agency which exercises supervision over the building, or, if a building permit is not required, the date on which construction may be commenced according to the law of the country in which the building is situated;

4) guarantees regarding the completion of the building as required and reimbursement of any payment made by the consumer if the building is not completed as required, and information on the conditions governing the exercise of rights arising from the guarantees.

(3) A vendor may change information contained in a description before entry into a contract only if this is necessary due to circumstances independent of the vendor.

(4) Any advertising referring to the right to use a building on a timeshare basis shall indicate the possibility to have access to descriptions specified in subsection (1) of this section and the place at which the descriptions may be accessed.

§ 381. Requirements for contracts

(1) A contract relating to the purchase of the right to use buildings on a timeshare basis shall be entered into in writing unless more stringent requirements for the format are provided by law.

(2) A contract shall contain at least the following information:

1) the information specified in clauses 380 (1) 1)-16) of this Act;

2) the name and address of the consumer;

3) information on the exact period for which the right of use which is the object of the contract may be exercised during each calendar year, and the term of the contract, the date on which the consumer may start to exercise the contractual right, and other conditions necessary in order to exercise the right of use;

4) the date and place of each party's signing of the contract.

(3) Information contained in a description specified in § 380 of this Act forms a part of a contract unless otherwise agreed by the parties and the contract contains a reference to agreements which differ from the conditions of the description. The consumer shall be notified of changes in the conditions of the description before entering into the contract.

§ 382. Language of description and contract

(1) A description provided for in § 380 and a contract provided for in § 381 of this Act shall be prepared, as chosen by the consumer, in one of the following languages:

1) Estonian;

2) the language of another country of residence of the consumer;

3) the language of the member state of the European Union of which the consumer is a citizen.

(2) If a contract is prepared in a language other than the language of the country in which the building is situated, the vendor shall issue a certified translation of the contract in the language of the country in which the building is situated to the consumer.

§ 383. Right of consumer to withdraw

(1) A consumer may withdraw from a contract relating to the purchase of the right to use a building on a timeshare basis within ten days as of receipt of the contract signed by both parties.

(2) If the contract does not contain all the information specified in subsection 381 (2) of this Act, the term for withdrawal specified in subsection (1) of this section shall commence as of submission of the corresponding information. If the information is not submitted, the term for withdrawal shall commence three months after the consumer receives the signed contract.

(3) If a description provided for in § 380 of this Act is not submitted to the consumer before entry into a contract or if the description is not submitted in the prescribed language, the term for withdrawal provided for in subsection (1) of this section shall be one month after receipt of the signed contract.

(4) If a consumer withdraws from a contract, the vendor shall not demand a charge for the services provided or the use of the building.

(5) Upon notarial attestation or certification of a contract, the consumer shall compensate the vendor for the costs of the attestation or certification of the contract if the consumer withdraws from the contract and if this is separately agreed, unless the consumer withdraws from the contract under the circumstances specified in subsections (2) and (3) of this section.

§ 384. Withdrawal from credit agreement

(1) If the price of a contract relating to the purchase of the right to use buildings on a timeshare basis is fully or partly covered by credit granted by the vendor and the consumer withdraws from the contract pursuant to § 383 of this Act, the consumer may also withdraw from the credit agreement. In such case, the consumer need not pay any compensation, interest or fines to the creditor or reimburse the expenses incurred by the creditor.

(2) The provisions of subsection (1) of this section apply correspondingly if the fee for

purchase of the right to use a building on a timeshare basis is covered by credit granted to the consumer by a third party, provided that the contract relating to the purchase of the right to use the building on a timeshare basis and the credit agreement are deemed to be economically uniform, particularly if the creditor uses the assistance of the vendor in preparing or entering into the credit agreement.

(3) If, in the case specified in subsection (2) of this section, credit has been paid to the vendor by the time the consumer withdraws from the contract, the rights and obligations of the vendor in respect of the consumer are transferred to the creditor.

§ 385. Prohibition on demanding and accepting instalments

A vendor shall not demand payments from a consumer or accept payments from the consumer earlier than ten days after submission of the signed contract to the consumer.

§ 386. Application of provisions

The provisions of this Chapter apply to a contract entered into with a consumer residing in Estonia or in a Member State of the European Union if the building which is the object of the contract is located in Estonia or the contract is entered into as a result of a public tender, advertising or other similar economic activities in Estonia, or if the contract is essentially linked to the territory of Estonia for any other reason, regardless of the state whose law is applicable to the contract.

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§ 387. Prohibition on violation of provisions

A person or agency provided by law may, pursuant to the procedure provided by law, demand that a vendor who violates the provisions of this Chapter and of § 194 of this Act terminate the violation and refrain from violating the provisions.

§ 388. Mandatory nature of provisions

Agreements which derogate from the provisions of this Chapter to the detriment of the consumer are void.

Chapter 21

Contract of Loan for Use

§ 389. Definition of contract of loan for use

By a contract of loan for use, one person (the lender) undertakes to grant the use of an object to another person (the borrower) free of charge.

§ 390. Liability of lender

(1) The lender shall be liable for any damage caused to the borrower by violation of the contract of loan for use only if the lender acts intentionally or with gross negligence.

(2) If the lender intentionally does not notify the borrower of the rights of a third party to the object or of the defects of the object, the lender shall compensate the borrower for the damage caused thereby.

§ 391. Costs of preservation of object

(1) The borrower shall bear the expenses necessary for preservation of the object granted for use.

(2) The borrower may demand the reimbursement of expenses other than those specified in subsection (1) of this section only pursuant to the provisions regarding *negotiorum gestio*. The borrower may remove improvements made to the thing by the borrower if this is possible without damaging the thing.

§ 392. Use of object

(1) The borrower may use the object only in the manner prescribed in the contract or, in the absence of an agreement, in a manner arising from the nature of the object or the purpose of use thereof.

(2) The borrower shall not transfer use of the object to a third party without the consent of the lender.

(3) The borrower shall not be liable for any alterations to or deterioration in an object lent if such alterations or deterioration are caused by the contractual use.

§ 393. Obligation to return

(1) The borrower shall return the lent object upon expiry of the term for use.

(2) If the term for use of the object is not specified, the object shall be returned after the purpose of the contractual use of the object has been attained. The lender may also demand that the object be returned earlier if the period during which the borrower could have attained the purpose of use has passed.

(3) If the term of use of the object is not specified and does not derive from the purpose of use of the object, the lender may cancel the contract and demand the return of the object at any time after entry into the contract.

(4) If the borrower transfers the use of the object to a third party, the lender may also demand that the object be returned by the third party after expiry of the contract.

§ 394. Extraordinary cancellation of contract by lender

The lender may cancel the contract of loan for use, regardless of the provisions of § 393 of this Act, and demand the return of the lent object if:

1) the lender needs the object due to unforeseeable circumstances;

2) the borrower uses the object contrary to the provisions of § 392 of this Act, in particular by unjustifiably transferring use of the object to a third party or if the object is seriously endangered due to violation of the obligations of the borrower;

3) the borrower is a natural person and dies or the borrower is a legal person and is dissolved.

§ 395. Expiry of claims

(1) Claims of lenders for compensation for damage on account of alterations to or deterioration in a lent object shall expire within six months as of the return of the object.

(2) Claims of borrowers for reimbursement of expenses or removal of improvements shall expire within six months as of the expiry of the contract.

(3) The limitation period for a claim for return of a lent thing begins to run upon termination of the contract.

Chapter 22

Loan Agreement and Credit Agreement

Division 1

General Provisions

§ 396. Definition of loan agreement

(1) By a loan agreement, one person (the lender) undertakes to grant a sum of money or a fungible thing (a loan) to another person (the recipient of the loan), and the recipient of the loan undertakes to repay the same sum of money or return a thing with the same characteristics in the same amount and with the same quality.

(2) A person who owes a sum of money or a fungible thing on any other legal basis may agree with the obligee that the sum of money or thing is owed as a loan.

(3) The provisions of this Chapter also apply if the objects of a loan agreement are things with specific characteristics, particularly securities, unless the parties have agreed otherwise.

§ 397. Loan interest

(1) Interest shall be paid on loans granted in economic or professional activities. In the case of other loan agreements, interest shall be paid only if so agreed.

(2) If the interest rate is not agreed on in the agreement, the ordinary rate which is usual in the case of loans of the same type at the time when and in the place where the loan is granted is presumed to be the rate or, in the absence of an ordinary rate, the rate provided for in § 94 of this Act is deemed to be the rate.

(3) Interest shall be calculated and paid at the end of each calendar year. If a loan is to be repaid before the end of a year, interest shall be paid upon repayment of the loan.

(4) The provisions of subsections (1)-(3) of this section do not preclude or restrict the rights of the parties as regards fines for delay.

§ 398. Ordinary cancellation of loan agreement entered into for unspecified term

(1) If the term for repayment of a loan is not agreed, the lender may demand repayment of the loan after cancellation of the loan agreement. The lender and the recipient of the loan may cancel the loan agreement entered into for an unspecified term by giving at least two months' notice.

(2) The recipient of a loan may cancel the loan agreement without interest and repay the loan without giving advance notice.

§ 399. Extraordinary cancellation of loan agreement by lender

(1) A lender may cancel a loan agreement and demand immediate repayment of the loan if:

1) according to the agreement, the loan is to be repaid in parts and the recipient of the loan delays the repayment of more than two parts or delays the repayment of one part for longer than three months;

2) the recipient of the loan fails to perform the obligation to pay interest;

3) the recipient of the loan violates the requirement to use the loan only for a certain specified purpose.

(2) A lender may cancel a loan agreement before the grant of the loan or may refuse to grant the loan if the financial situation of the recipient of the loan has deteriorated such that the repayment of the loan is at risk or if the recipient of the loan has knowingly submitted false information in order to obtain the loan. The lender also has this right if the recipient of the loan has become insolvent before entry into the agreement and if this becomes known to the lender only after entry into the agreement.

§ 400. Extraordinary cancellation of variable interest rate loan agreement by borrower

(1) The recipient of a variable interest rate loan may cancel the loan agreement at any time by giving at least three months' notice.

(2) A loan agreement is not deemed to have been cancelled by the recipient of the loan pursuant to subsection (1) of this section if the recipient does not repay the loan within two weeks after the cancellation enters into force.

(3) Any agreement to preclude the right of cancellation which belongs to the recipient of a loan pursuant to subsection (1) or (2) of this section or to impair the exercise thereof is void.

§ 401. Credit agreement

(1) A credit agreement is an agreement by which one person (the creditor) undertakes to transfer a sum of money (the credit) to the disposal of another person (the debtor), and the debtor undertakes to pay interest on the credit and repay the credit upon the expiry of the agreement.

(2) The postponement of a due date, leasing or any other similar financial accommodation may be the object of a credit agreement.

(3) The provisions concerning loan agreements apply to credit agreements unless otherwise provided by law.

Division 2

Consumer Credit Contract and Contracts Linked thereto

§ 402. Definition of consumer credit contract

A consumer credit contract is a credit contract by which a creditor, in the course of the economic or professional activities thereof, grants or undertakes to grant credit or a loan to a consumer.

§ 403. Application of provisions

(1) The provisions of this Division apply to contracts by which one person (the credit broker) undertakes to arrange, for a charge, for credit to be granted to consumers in the course of the economic or professional activities of the credit broker or to indicate the possibility to enter into a credit contract (a credit brokerage contract).

(2) The provisions of this Division also apply to contracts entered into by a consumer to obtain credit to commence independent economic or professional activities in the case where the net amount of the credit or the net price of the thing or service to be acquired for the credit does not exceed an amount equivalent to 50 000 euro.

(3) The provisions of this Division do not apply to credit contracts or credit brokerage contracts:

1) in the case of which the net amount of credit or the net price of the things or services acquired for the credit is smaller than an amount equivalent to 200 euro;

2) according to which the consumer is required to repay the credit over a period of up to three months;

3) entered into between an employer and an employee and the interest rate of which is lower than the ordinary interest rate imposed upon the grant of such credit by a credit institution.

(4) The provisions of clause 404 (2) 2) and §§ 409, 411, 414 and 417 of this Act do not apply to credit contracts secured by mortgages which are entered into under the usual conditions for such contracts.

(5) The provisions of §§ 404-410 and subsection 414 (2) of this Act do not apply to credit contracts entered into as a judicial compromise if agreement has been reached on the annual interest rate, the expenses which are the basis for calculation upon entry into the contract and the conditions under which the interest rate or expenses can be changed.

(6) The provisions of this Division apply to consumer credit contracts entered into with a consumer residing in Estonia or in a Member State of the European Union even if the contract is entered into as a result of a public tender, advertising or other similar economic activities in Estonia or if the contract is essentially linked to the territory of Estonia for any other reason, regardless of the state whose law is applicable to the contract.

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§ 404. Application of consumer to enter into contract

(1) In the case of a consumer credit contract, an application submitted by a consumer to assume obligations shall be in writing. The contract or a copy of the contract shall be given to the consumer.

(2) A declaration of intent signed by a consumer shall set out the following:

1) the credit to be paid (net amount of credit) or the upper credit limit;

2) the gross amount of all payments to be made by the consumer in order to repay the credit and to pay interest and other costs (gross amount of credit), and, in the case of a credit contract with variable terms and conditions, the gross amount of all payments calculated on the basis of the initial terms and conditions upon entry into the contract;

3) the conditions for repayment of the credit, particularly the number of instalments for the consumer to pay the credit, interest and costs, the size of the instalments and the terms or due dates of the payments;

4) the annual interest rate;

5) other expenses relating to the credit contract, including credit brokerage charges which are to be borne by the consumer, and, if the amount of these charges is not known, the bases for calculation of these charges;

6) the annual percentage rate;

7) the payments and costs arising from an insurance contract to be entered into in connection with the credit contract;

8) in the case of early repayment of the credit, the right of the consumer not to pay the interest for the period during which the credit is not used and not to bear other expenses relating to the credit for that period;

9) the conditions for termination of the credit contract, including the right of the consumer to withdraw and the procedure and term for the exercise of such right;

10) the security required from the consumer.

(3) If the amount of credit depends on how much the consumer uses the credit, the in-

formation specified in clause (2) 2) of this section need not be set out.

(4) If a consumer is required to enter into an insurance contract and the choice of insurer is left to the consumer, the information specified in clause (2) 7) of this section need only set out a reference to the requirement for insurance and an estimate of the costs usually related to insurance.

§ 405. Contracts to finance acquisition of things or provision of services

(1) In the case of a credit contract the object of which is the acquisition of a thing, provision of a service or financing of another object of the contract, the following shall be set out instead of the information provided for in subsections 404 (2)-(4) of this Act:

1) a description of the thing, service or other performance of an act which is the object of the contract;

2) the price of the thing or service acquired for the credit, if payment is to be made immediately (net price);

3) the gross amount of credit which is to be paid pursuant to the credit contract as contributions, instalments, interest and other costs;

4) the number of instalments and their size, the terms of or due dates for the payments, or the method used to determine any of these if they are unknown at the time the contract is entered into;

5) the annual percentage rate;

6) the payments and costs arising from an insurance contract to be entered into in connection with the credit contract;

7) the consumer's right of withdrawal, the procedure and term for the exercise thereof, and the right of withdrawal from a contract of sale linked to the credit contract;

8) the securities required from the consumer and the reservation on ownership (§ 233 of this Act).

(2) If a creditor transfers things or provides services only for instalments, it is not necessary to indicate the net price or the annual percentage rate.

(3) In the case of a leasing contract, the price for which the lessor purchases the object of leasing is deemed to be the net price.

(4) If a consumer is required to enter into an insurance contract and the choice of insurer is left to the consumer, only a reference to the necessity of insurance and an estimate of costs usually related to insurance needs to be set out as the information specified in clause (1) 6) of this section.

§ 406. Annual percentage rate

(1) The annual percentage rate is the total cost of the credit to the consumer expressed as an annual percentage calculated on the basis of the net amount or net price of the credit, provided that the credit contract is valid for the agreed term.

(2) Upon calculation of the annual percentage rate, the costs which the consumer is required to bear upon violation of the obligations arising from the contract, or costs which the consumer is required to bear in connection with the acquisition of a thing, the use of a service or the acceptance of the performance of another act shall not be taken into account.

(3) Transfer charges, and costs of maintenance of an account designated for the repayment of credit or the payment of interest and other charges, which are borne by the consumer shall be taken into account upon calculation of the annual percentage rate if the consumer does not have reasonable freedom of choice in the matter and the specified charges are unreasonably high. The collection of expenses relating to the repayment of credit, payment of interest and other charges borne by the consumer shall be taken into account if the expenses are borne by the consumer.

(4) Charges for securities shall not be taken into account upon calculation of the annual percentage rate. Charges for insurance shall be taken into account upon calculation of the annual percentage rate only if the creditor prescribes these as mandatory for the grant of credit or if they are for the purposes of ensuring full or partial repayment of the gross amount of credit to the creditor upon the death, invalidity, illness or unemployment of the consumer.

(5) If changes to the conditions which affect the interest rate or the price of goods or services acquired for the credit have been agreed, the credit contract shall, instead of the annual percentage rate, set out the initial annual percentage rate based on the initial interest rate and other conditions at the time of entry into the contract as if they were to be applicable during the whole term of the contract. Additionally, the prerequisites for changing the conditions determining the price and the earliest possible time for changing the price shall be set out.

(6) The specific procedure for calculation of the annual percentage rate shall be established by the Minister of Finance, based on the requirements of the European Union.

§ 407. Overdraft

(1) If a credit institution grants credit to a consumer in a manner which permits the consumer to overdraw the bank account by a particular amount (an overdraft), the provisions of §§ 404-406 of this Act do not apply.

(2) Before entering into an overdraft agreement, the credit institution shall notify the consumer of the following:

1) the upper credit limit;

2) the interest rate applicable at the time of notification and the conditions for changing the interest rate;

3) the conditions for termination of the agreement.

(3) The creditor shall confirm the information specified in subsection (2) of this section to the consumer in a format which can be reproduced in writing not later than after the first use of the credit. The consumer shall be promptly informed of any change in the interest rate. Such confirmation and notification may be given in a statement of account sent to the consumer.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(4) In the absence of an agreement to grant an overdraft and if a credit institution permits a consumer to overdraw the bank account thereof and the bank account is overdrawn for longer than three months, the consumer shall be informed of the annual interest rate and the charges payable by the consumer and of any changes thereto. Such notification may be given in a statement of account.

(5) The provisions of subsections (3)-(4) of this section apply also to credit card consumer credits.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

§ 408. Consequences of failure to conform with format of contract

(1) A consumer credit contract is void upon failure to comply with the requirement for format provided for in subsection 404 (1) of this Act or the absence of any of the information provided for in §§ 404 or 405 of this Act.

(2) In the absence of the information provided for in subsection 404 (2) of this Act, a credit contract becomes valid if the consumer receives the loan or begins to use the credit.

(3) In the absence of information provided for in § 405 of this Act, a credit contract becomes valid if the thing is delivered or service is provided to the consumer or another obligation is performed with respect to the consumer.

(4) If, in the case specified in subsection (2) of this section, there is no information on the interest rate, the annual percentage rate or initial annual percentage rate, or the gross amount of credit specified in clause 404 (2) 2) of this Act, the interest rate provided for in § 94 of this Act is deemed to be the interest rate unless this is higher than the interest rate previously agreed. If, in the case specified in subsection (2) of this section, there is no information on other expenses owed by a consumer, the consumer does not owe costs of which the consumer is not informed. The creditor shall re-determine the instalments taking into account the reduction in the interest rate and other costs and inform the consumer thereof.

(5) If, in the case specified in subsection (3) of this section, there is no information on

the gross amount of credit specified in clause 405 (1) 3) of this Act, the annual percentage rate or the initial annual percentage rate, the interest rate shall not be higher than the interest rate provided for in § 94 of this Act.

(6) If, in the case specified in subsection (2) of this section, the prerequisites for changing the conditions which affect the size of the costs relating to credit are not communicated to the consumer, the size of the costs relating to the credit shall not be changed to the detriment of the consumer.

(7) If, in the case specified in subsection (3) of this section, the net price is not communicated to the consumer, the market price is deemed to be the net price.

(8) If, upon entry into a consumer credit contract, the creditor has not informed the consumer of the security which is required from the consumer, security may be demanded later only if the net amount of credit exceeds an amount equivalent to 50 000 euro.

(9) If the annual percentage rate is indicated in a credit contract as being lower than the actual rate, the rate of interest which is agreed in the credit contract shall be reduced by the percentage rate by which the indicated annual percentage rate is lower than the actual rate. If the annual percentage rate is indicated as being lower than the actual rate in a credit contract the object of which is the acquisition of a thing, provision of a service or financing of another object of the contract, the gross amount of credit specified in clause 405 (1) 3) of this Act shall be reduced by the percentage rate by which the indicated annual percentage rate is lower than the actual rate.

§ 409. Right of consumer to withdraw

(1) A consumer may withdraw from a consumer credit contract within seven days as of entering into the contract. If a consumer withdraws from a consumer credit contract, a person who joined in an obligation arising from the consumer credit contract or provided surety for the obligation of the consumer arising from the consumer credit contract may also withdraw from the contract.

(2) The term specified in subsection (1) of this section shall commence after the creditor issues the consumer with an explanation which is clearly printed and designed and signed by the creditor and which sets out the rights arising from subsection (1) of this section, the extinction of these rights pursuant to subsection (3) of this section, the name and address of the person to whom the application for withdrawal is to be communicated and, upon the existence of a contract of sale specified in § 414 of this Act, a reference that, upon withdrawal from the contract, the contract of sale will not enter into force.

(3) If a consumer exercises the right to withdraw from a contract specified in subsection (1) of this section, the consumer shall repay the credit within two weeks after applying for withdrawal or the credit being paid. Otherwise, the consumer is deemed not to have withdrawn from the contract.

(4) The provisions of subsection (3) of this section do not apply if a consumer withdraws from a credit contract specified in § 405 of this Act and a contract of sale specified in § 414 of this Act.

(5) If no explanation which complies with the requirements specified in subsection (2) of this section is given to a consumer, the right of the consumer to withdraw shall extinguish upon the full performance of the contract by both parties, but still not later than one year after submission of the application by the consumer to enter into the credit contract.

(6) The provisions of subsections (1)-(5) of this section apply to an overdraft agreement only if the consumer, pursuant to the credit contract, does not have the right to cancel the agreement at any time without adhering to the term for cancellation or to repay the credit without additional charges.

(7) If the purpose of a consumer credit contract is to finance the purchase of the right to use a building on a timeshare basis and the credit contract is a contract linked to a contract relating to the purchase of the right to use the building on a timeshare basis, the provisions concerning the right of withdrawal from contracts relating to the purchase of the right to use a building on a timeshare basis apply instead of the provisions of subsections (1)-(5) of this section.

§ 410. Distance consumer credit contracts

(1) The provisions of §§ 404 and 405 of this Act do not apply to distance consumer credit contracts if the information provided for in subsection 404 (2) or subsection 405 (1) of this Act is communicated to the consumer in a format which can be reproduced in writing such that the consumer can examine the information before entering into the contract.

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(2) A consumer may withdraw from a contract specified in subsection (1) of this section pursuant to the provisions of § 57 of this Act.

(3) A consumer may withdraw from a contract under the conditions provided for in § 409 of this Act if the consumer cannot withdraw from the contract pursuant to the provisions of § 57 of this Act. In such case, an explanation concerning the right of withdrawal (subsection 409 (2) of this Act) communicated to the consumer in a format which can be reproduced in writing is sufficient.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

§ 411. Right of consumers to early repayment

(1) A consumer may perform the obligations arising from a consumer credit contract before the prescribed time. In such case, the consumer does not owe interest or other charges for the period when the credit is not used.

(2) If, pursuant to subsection 405 (2) of this Act, indication of the net price and the annual percentage rate is not required in a consumer credit contract, the interest rate provided for in § 94 of this Act shall taken as the basis in the case specified in subsection (1) of this

section.

(3) A creditor may demand interest and other charges for the first nine months of a credit contract even if the consumer performs the obligations thereof before the prescribed time.

§ 412. Defences of consumers

Agreements which preclude or restrict the right of a consumer to plead defences arising from a contract against third parties to whom the obligee assigns the claims arising for the creditor from the consumer credit contract or which preclude or restrict the right of set-off of the consumer are void.

§ 413. Use of bills of exchange and cheques

(1) Consumers shall not be required to give security for claims arising from a credit contract by means of bills of exchange or to issue cheques, and creditors shall not accept such bills of exchange or cheques.

(2) If a bill of exchange or cheque specified in subsection (1) of this section is accepted, the consumer may reclaim this from the creditor at any time. The creditor shall compensate the consumer for the costs and damage caused by issue of the bill of exchange or cheque.

§ 414. Contract of sale linked to credit contract

(1) A contract of sale forms a contract linked to a credit contract if the purpose of the credit contract is to finance the payment of a purchase price and both contracts are deemed to be economically uniform. Contracts are deemed to be economically uniform particularly if a creditor uses the assistance of a seller in preparing or entering into the credit contract or if the creditor pays the credit amount to the seller.

(2) If a consumer withdraws from a credit contract pursuant to the provisions of § 409 of this Act, the consumer may also withdraw from a contract of sale linked to the credit contract. If the credit amount is received by the seller, the rights and obligations of the seller are transferred to the creditor in the event of the seller's withdrawal from the contract of sale.

(3) A consumer may refuse to repay credit if the defences arising from a contract of sale linked to a credit contract grant the consumer the right to refuse to perform the obligations of the consumer arising from the contract of sale with respect of the seller. If the defences of the consumer are based on the lack of conformity of the delivered thing to the contract conditions and the consumer demands that the lack of conformity be remedied or the thing be substituted on the basis of law or the contract, the consumer may refuse to repay the credit only if attempts to remedy the lack of conformity or substitute the thing have been unsuccessful.

(4) The provisions of subsections (1)-(3) of this section also apply to credit contracts by which the performance of obligations other than the delivery of things is financed.

(5) The provisions of subsections (1)-(3) of this section do not apply to credit contracts the purpose of which is to finance the acquisition of securities, foreign currency or precious metals.

§ 415. Penalty for late payment and making of insufficient payments

(1) If a consumer delays the payments owed thereby, any penalty for late payment demanded from the consumer shall not exceed the amount provided for in subsection 113 (1) of this Act. This does not preclude or restrict the right of the creditor to demand compensation for damage from the consumer in an amount which exceeds the penalty for late payment.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(2) If, on the basis of a credit contract, a consumer has made a payment which is insufficient for the performance of all obligations which have fallen due, the payment shall cover:

1) firstly, the expenses incurred for collection of the debt;

2) secondly, the principal sum owed;

3) thirdly, interest;

4) fourthly, other obligations.

(3) The provisions of subsection (2) of this section do not apply if the consumer makes payments on the basis of an execution document which is prepared as a principal claim in order to reclaim interest.

(4) A creditor shall not refuse to accept insufficient payments.

§ 416. Restrictions on cancellation of credit contracts

(1) In the case where credit is repayable in instalments, the creditor may cancel the credit contract due to a delay in payment by the consumer only if the consumer is wholly or partly in delay for at least three consecutive instalments and if the creditor has, without success, granted an additional term of at least two weeks to the consumer for the payment of the remaining amount together with notification that the creditor will cancel the contract upon failure to pay the instalments within the term and will claim for payment of the whole debt.

(2) The creditor shall, not later than at the same time as granting a term specified in subsection (1) of this section, offer the consumer the opportunity to negotiate in order to reach a possible agreement.

(3) If the creditor cancels the contract, the unpaid gross amount of credit shall be reduced by the interest and the costs calculated for the consumer for the period when the credit is not used.

§ 417. Withdrawal of creditor from credit contract

(1) If a consumer is in delay with the repayment of credit, the creditor may withdraw from a credit contract the object of which is the delivery of things or performance of obligations for payment of instalments only under the conditions specified in subsection 416 (1) of this Act.

(2) If a creditor takes possession of things which are delivered to a consumer on the basis of a credit contract or a contract of sale linked to the credit contract, this is deemed to be withdrawal from the contract by the creditor unless the creditor agrees with the consumer to pay to the consumer the usual value of the thing at the time when possession of the thing is taken.

§ 418. Format of credit brokerage contract

(1) A credit brokerage contract shall be entered into in writing. The commission of a credit broker as a percentage of the net amount or net price of the credit shall be set out in the contract. If the credit broker also agrees on commission with a creditor, this shall also be indicated in the contract.

(2) A credit brokerage contract and a credit application shall not be contained in one document.

(3) A credit broker shall issue a copy of a contract to the consumer.

(4) Credit brokerage contracts which do not comply with the requirements provided for in subsections (1) and (2) of this section are void.

§ 419. Commission payable to credit brokers

(1) A consumer shall pay commission to a credit broker only if the consumer is granted credit as a result of the activities of the broker and the consumer can no longer withdraw from the credit contract pursuant to § 409 of this Act.

(2) If credit is taken for the early payment of other credit with the knowledge of the credit broker, the credit broker has the right to receive commission only if the annual percentage rate or the initial annual percentage rate does not increase. Upon calculation of the annual percentage rate or the initial annual percentage rate for repayable credit, the possible brokerage costs for the repayable credit shall not be taken into account.

(3) With respect to services related to arranging for credit to be granted to a consumer or informing the consumer of the possibility to enter into a credit contract, a credit broker shall not claim anything other than the commission specified in subsections (1) or (2) of this section and, and with the agreement of the consumer, reimbursement of the necessary expenses incurred by the credit broker.

§ 420. Prohibition on violation of provisions

A person or agency provided by law may, pursuant to the procedure provided by law, demand that a creditor or credit broker who violates the provisions of this Division or § 194 of this Act terminate the violation and refrain from violating the provisions.

§ 421. Mandatory nature of provisions

Agreements which derogate from the provisions of this Division to the detriment of the consumer are void. The provisions of this Division also apply if an attempt is made to avoid application of the provisions by different wording of agreements, in particular upon division of the credit amount between several contracts.

Part 4

Insurance Contract

Chapter 23

General Part

Division 1

General Provisions

§ 422. Definition of insurance contract

(1) Pursuant to an insurance contract, a person (insurer) undertakes, upon the occurrence of an insured event, to compensate for damage caused by the insured event or to pay the agreed amount of money as a lump sum or in instalments, or to perform the contract as otherwise agreed (insurer's performance obligation). The other person (policyholder) undertakes to pay insurance premiums to the insurer.

(2) In the cases provided by law, the policyholder is required to enter into an insurance contract (obligatory insurance).

§ 423. Insured event and insured risk

(1) An insured event is an incident previously agreed upon, upon the occurrence of which the insurer shall fulfil the performance obligation arising from the contract.

(2) Insured risk is the hazard against which insurance is provided.

§ 424. Insured person and object of insurance

(1) An insured person is the policyholder or a third party, whether identified by name or not, whose insured risk is insured. It is presumed that the insured risk against which insurance is provided relates to the policyholder.

(2) An object of insurance is an object the insured risk of which is insured.

§ 425. Beneficiary

(1) A beneficiary is a person who, upon the occurrence of an insured event, is entitled to the insurance indemnity, agreed amount of money or performance by the insurer of any other obligation provided in the contract.

(2) After a policyholder dies, the successors of the policyholder shall not replace the beneficiary.

§ 426. Sum insured

(1) In indemnity insurance, the insurer shall compensate for damage caused upon the occurrence of the insured event only to the extent of the agreed amount of money which is the maximum amount payable by the insurer (sum insured). This shall not affect the provisions of § 477 of this Act.

(2) The sum insured may be expressed in a manner other than in the form of the maximum amount payable.

§ 427. Limitations on freedom of contract

(1) Any agreement which derogates from the provisions of §§ 428 and 435, subsections

436 (2) and 438 (3), § 439, subsections 441 (2) and (3), § 442, subsection 445 (3), §§ 449 and 450, subsections 452 (2) and 454 (2), §§ 457-459, 461, 462, 468-472, 474, 475, 487 and 491, subsection 492 (3), and §§ 515, 519-531, 535-537, 542-547 and 557-567 and § 433 of this Act to the detriment of the policyholder is void.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(2) The provisions of subsection (1) of this section shall not apply to:

1) reinsurance contracts;

2) railway rolling stock, aircraft and ship insurance contracts;

3) insurance contracts with respect to the carriage of goods;

4) aircraft and ship liability insurance contracts;

5) credit and suretyship insurance contracts if insured risks arising from business or professional activities are being insured.

(3) The provisions of subsection (1) of this section also do not apply to land vehicle, fire and natural forces or financial loss insurance contracts or to liability insurance contracts other than those specified in subsection (2) of this section, if the policyholder satisfies at least two of the following conditions:

1) the balance sheet total of the policyholder exceeds an amount which is equivalent to 200 000 euro;

2) the net turnover of the policyholder exceeds an amount which is equivalent to 12 800 000 euro;

3) The policyholder employs an average of over 250 persons during the financial year.

(4) In the case of companies belonging to the same group, the figures provided in subsection (3) of this section shall be calculated on the basis of the company data in the consolidated accounts.

Division 2

Entry into Contract

§ 428. Information to be disclosed to persons wishing to enter into insurance contracts

(1) An insurer shall ensure that a natural person who wishes to enter into an insurance contract is provided, prior to entering into the contract, with at least the following information:

1) the name and legal form of the insurer;

2) the address of the insurer, and the address of the office through which the contract is entered into if this is not done at the seat of the insurer;

3) standard terms applicable to the insurance contract, including the insurance premium rate and information concerning the provisions of law applicable to the contract;

4) obligations of the insurer if different form those prescribed in the policy conditions and in the insurance premium rate;

5) the period of validity of the insurance contract and conditions for termination thereof;

6) the size of the insurance premiums and the procedure for payment thereof, stating separately the size of the different insurance premiums if the insurance relationship is to comprise several independent insurance contracts;

7) additional payments to be made or expenses to be covered by the policyholder besides the insurance premiums, and the total amount payable together with the insurance premiums;

8) the term during which the person wishing to enter into the insurance contract is bound by the application to enter into the contract;

9) the address of the competent insurance supervisory body where the policyholder may lodge a complaint concerning the activities of the insurer.

(2) Prior to entry into a life insurance contract or an accident insurance contract with the return of premiums, the insurer shall ensure that the policyholder who is a natural person is provided with the following information in addition to the information set out in subsection (1) of this section:

1) the principles and methods of calculating the life provision;

2) the surrender value of the insurance;

3) the minimum sum of insurance premiums to convert premium-free insurance and the obligations of the insurer arising from premium-free insurance;

4) in the case of unit-linked insurance, information concerning the underlying assets of the insurance;

5) general information concerning the principles of taxation applicable to the corresponding class of insurance.

§ 429. Provision of information during period of validity of contract

During the period of validity of an insurance contract, the insurer shall ensure that informa-

tion concerning changes to the information specified in § 428 of this Act is forwarded to the policyholder who is a natural person. In the case of life insurance and accident insurance with the return of premiums, the size of the life provision shall be disclosed once a year.

§ 430. Manner of notification

Information specified in §§ 428 and 429 of this Act shall be forwarded to the policyholder in a format which can be reproduced in writing and shall be unambiguously worded, clearly organised and prepared in Estonian or, if so agreed, in another language.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

§ 431. Application for entry into insurance contract

(1) Application forms for entering into an insurance contract may contain only so many proposals for varying insurance contracts as not to compromise their clarity, readability or intelligibility.

(2) An insurer shall indicate the standard terms applicable to an insurance contract on the application form issued by the insurer or make the standard terms available to the applicant prior to submission of the form or at the same time thereas.

§ 432. Consequences of violation of notification obligation

(1) If an insurer fails to perform the obligations provided for in § 428 of this Act, including making the standard terms applicable to an insurance contract available to the policyholder, the contract is deemed not to have been entered into if the policyholder objects to the contract in a format which can be reproduced in writing within fourteen days after the information and standard terms are made available to the policyholder.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336; 19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(2) The term set out in subsection (1) of this section shall commence only if, in addition to the provisions of subsection (1) of this section, the policyholder has been informed in a format which can be reproduced in writing and in typographically clear form of the right to contest and about the beginning and length of the term. The insurer shall prove that the documents were received. Sending the objection within the term shall suffice to make it timely.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) Regardless of the provisions of subsection (2) of this section, the policyholder's right to contest expires after one year after payment of the first insurance premium.

(4) The policyholder shall not have the right specified in subsection (1) of this section if the insurer provides the policyholder with immediate insurance cover and the parties agree to waive the delivery of policy conditions and of the information specified in § 428 of this Act. At the request of the policyholder, the information and policy conditions shall still be delivered thereto together with the policy at the latest.

§ 433. Withdrawal of policyholder from contract

(1) If an insurance contract, including a life insurance contract, is entered into for a term of more than one year, the policyholder may withdraw from the contract within fourteen days after entry into the contract. Sending the application for withdrawal within the term shall suffice to make it timely.

(2) The term specified in subsection (1) of this section shall not commence until the insurer has informed the policyholder of the right to withdraw and the policyholder has confirmed this by a signature. If the policyholder is not informed of the right to withdraw, the right to withdraw shall expire one month after payment of the first insurance premium.

(3) The policyholder shall not have the right to withdraw if the insurer provides the policyholder with immediate insurance cover or if the insurance contract is entered into for the policyholder's ongoing business or professional activities.

(4) The provisions of subsection (3) of this section shall not apply to life insurance contracts.

§ 434. Policy

(1) An insurer shall issue the policyholder with a document signed by the insurer concerning entry into the insurance contract (policy).

(2) At least the information provided for in § 428 of this Act shall be set out in a policy along with:

1) the name and address of the policyholder and the insured person, unless the policy is a bearer policy;

2) the class of insurance, a definition of the object of the insurance contract, a list of insured risks and the term for notification of an insured event;

3) the sum insured or the bases for calculation thereof;

4) the effective date of the contract and the duration of any possible extension of the contract, and the duration of insurance cover;

5) in the case of obligatory insurance, the legislation which renders entry into the insurance contract obligatory.

§ 435. Replacement of policy and copies of applications

(1) If a policy is lost or destroyed, the policyholder may request the insurer to issue a replacement policy.

(2) The policyholder may request copies of any declarations of intent made in a format which can be reproduced in writing thereby with respect to the contract. The insurer shall inform the policyholder of this right when the policy is issued.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) If the policyholder needs a copy in order to perform a legal act with respect to the insurer which has to be performed within a certain period of time and the insurer fails to issue the copy to the policyholder in advance, the running of the term shall be suspended from the submission of a request for a copy to be issued until the receipt of the copy.

§ 436. Disparity between policy and application of policyholder

(1) If the contents of a policy deviate from the application of the policyholder, the deviation shall be deemed to have been approved by the policyholder if the policyholder does not object thereto in a format which can be reproduced in writing within fourteen days after receiving the policy.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) A deviation shall be deemed to have been approved only if the insurer has brought the provisions of subsection (1) of this section to the attention of the policyholder with a separate notice in a format which can be reproduced in writing at the time the policy is issued. The notice may be replaced by a notation on the policy which is highlighted and separate from the contents of the policy. Each deviation shall be indicated separately.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) If the provisions of subsection (2) of this section are not complied with, any deviation shall not be binding on the policyholder and the terms and conditions included in the policyholder's application shall be deemed to be the terms and conditions of the contract.

§ 437. Commencement of insurance cover

If the term of the obligations of an insurer (insurance cover) is determined in days or a longer period of time, it is presumed that the insurance cover commences at 00.00 on the day following entry into the contract and expires at 24.00on the last day of the term.

§ 438. Retroactive insurance cover

(1) A contract may prescribe that insurance cover commences retroactively prior to entry into the contract.

(2) The insurer shall not require payment of an insurance premium for retroactive insurance cover if the insurer knew or should have known at the time of entry into the contract that the insured event had not occurred.

(3) The insurer does not have a performance obligation when providing retroactive insurance cover if the policyholder knew or should have known at the time of entry into the contract of the occurrence of the insured event. In this case, the insurer may demand that the insurance premiums be paid until the end of the period of insurance in which the insurer became aware of the insured event having occurred, unless the insurer already knew or should already have known of the occurrence of the insured event at the time of entry into the contract.

§ 439. Immediate insurance cover

(1) A policyholder may, prior to entering into a contract and using the application to enter into the insurance contract, apply for the insurer to provide the insurance cover prescribed in the contract during the term for which the policyholder is bound by the application (immediate insurance cover).

(2) If an application for immediate insurance cover is submitted, the insurer shall inform the policyholder of whether immediate insurance cover will be provided for or not.

§ 440. Obligation of policyholder to notify of material circumstances

(1) Upon entering into a contract, the policyholder shall inform the insurer of all circumstances known to the policyholder which, due to their nature, may influence the insurer's decision to enter into the contract or to enter into the contract on the agreed terms (material circumstances). Material circumstances are presumed to be circumstances concerning which the insurer has directly requested information in a format which can be reproduced in writing.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) The policyholder is under no obligation to inform the insurer of circumstances which are already known to the insurer or which the policyholder may reasonably assume to be known to the insurer.

§ 441. Withdrawal of insurer from contract upon violation of notification obligation

(1) If, in violation of the provisions of § 440 of this Act, a policyholder fails to provide information concerning material circumstances, intentionally prevents material circumstances becoming known or provides incorrect information concerning material circumstances, the insurer may withdraw from the contract.

(2) The insurer shall not withdraw from a contract in the case specified in subsection (1) of this section if:

1) the insurer knew that the information was incorrect or knew of circumstances concerning which information was not provided;

2) failure to provide information or the provision of incorrect information was not the fault of the policyholder;

3) circumstances concerning which information was not provided or concerning which incorrect information was provided ceased to exist before the insured event occurred;

4) the insurer has waived the right to withdraw.

(3) If the policyholder has to inform the insurer of material circumstances on the basis of questions submitted by the insurer in a format which can be reproduced in writing, the insurer may withdraw from the contract on the direct grounds of failure to provide information regarding circumstances not included in the questions only if the circumstances are concealed intentionally.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(4) If the insurer cannot withdraw from an insurance contract on the basis of the provisions of subsection (2) of this section, the insurer may demand higher insurance premiums from the policyholder pursuant to the provisions of § 460 of this Act.

(5) The provisions of subsections (1)-(4) of this section do not preclude the insurer's right to annul the contract on the grounds of misrepresentation.

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§ 442. Term for insurer to withdraw from contract

(1) An insurer may withdraw from a contract on the basis specified in § 441 of this Act only within one month as of the time when the insurer becomes aware or should have become aware of the violation of the notification obligation specified in § 440 of this Act. An insurer may not withdraw from a contract if three years have passed since entry into the contract.

(2) If an insurer withdraws from a contract on the basis specified in § 441 of this Act after the insured event has occurred, the insurer shall perform the obligations arising from the contract if the circumstances concerning which information was not provided had no bearing on the occurrence of the insured event and do not preclude or restrict the validity of the in-

surer's performance obligation. When assessing the existence of the insurer's performance obligation, the proportion of the insurance premiums paid to the insurance premiums which should have been paid if information concerning the circumstances had been provided shall be taken into account.

Division 3

Increase in Probability of Insured Risk

§ 443. Notification of increase in probability of insured risk

A policyholder shall immediately notify the insurer of an increase in the probability of the insured risk, unless the increase in the probability of the insured risk is caused by circumstances which are common knowledge and which do not affect the insured risk of this policyholder alone.

§ 444. Prohibition on increasing probability of insured risk

After entering into a contract, a policyholder shall not increase the probability of the insured risk without the consent of the insurer or allow the risk to be increased by persons for whom the policyholder is responsible.

§ 445. Release of insurer from obligation to perform insurance contract upon increase in probability of insured risk

(1) If a policyholder violates the requirement provided for in § 443 of this Act, the insurer shall be released from the obligation to perform the insurance contract if the insured event occurs at least one month after the time when the insurer should have received the notice unless, at the time when the insurer should have received the notice, the insurer was or should have been aware of the increase in the probability of the insured risk.

(2) If a policyholder violates the requirement provided for in § 444 of this Act, the insurer shall be released from the obligation to perform the insurance contract to the extent of the increase in the probability of the insured risk due to the circumstances caused by the policyholder, if the insured event occurs after an increase in the insured risk.

(3) The provisions of subsections (1) and (2) of this section shall not apply if:

1) by the time the insured event occurs, the term for the insurer to cancel the contract due to an increase in the probability of the insured risk or to request amendment thereof has expired without the insurer cancelling the contract or requesting amendment thereof;

2) the increase in the probability of the insured risk had no bearing on the occurrence of the insured event;

3) a higher insured risk would not have affected the validity or scope of the insurer's performance obligation;

4) the increase in the probability of the insured risk was the fault of the insurer.

(4) If, pursuant to the provisions of subsection (1) or (2) of this section, an insurer is released from the performance obligation only with respect to certain insured objects or persons, the insurer shall be released from the entire performance obligation if, under the circumstances, it can be presumed that the insurer would not have entered into the contract on the same terms solely for such objects or persons.

§ 446. Amendment and cancellation of contract in event of increase in probability of insured risk

(1) If a policyholder violates the obligation provided for in § 444 of this Act, the insurer may cancel the insurance contract without prior notice. If the violation was not the fault of the policyholder, the insurer may cancel the contract by giving one month's advance notice.

(2) If the probability of the insured risk increased due to a change effected by the policyholder without the consent of the insurer and the policyholder failed to give notice of the increase in the probability of the insured risk in time, the insurer may cancel the insurance contract without prior notice. If the policyholder was not responsible for the violation of the prohibition on increasing the probability of the insured risk, the insurer may cancel the contract by giving one month's advance notice.

(3) If the insured risk increases after entry into the contract and independently of the policyholder, the insurer may demand amendment of the contract retroactively, as of the increase in the insured risk. If the policyholder does not agree to the amendment of the contract or if the insurer would not have entered into the contract under the circumstances of the increased insured risk, the insurer may cancel the contract by giving one month's advance notice.

(4) The insurer's right to demand amendment of a contract or to cancel the contract in the cases specified in subsections (1)-(3) of this section expires if the insurer does not exercise the right within one month as of becoming aware of the increase in the insured risk. The insurer also has the right to cancel the contract in the cases specified in subsections (1)-(3) of this section even if the situation prior to the increase in the insured risk is restored.

(5) The provisions of subsections (1)-(4) of this section shall not apply if the insured risk increased due to circumstances related to the insurer.

§ 447. Application of provisions

(1) The provisions of this Division shall also apply to an increase in the insured risk which took place during the period of time between the submission of an application to enter into a contract by the policyholder and entry into the contract if the insurer was not aware of the increase in the insured risk at the time of entering into the contract.

(2) The provisions of this Division shall not apply if an increase in the insured risk is insignificant or if the parties to the contract agree that the increase in the insured risk does not affect the insurance contract.

(3) The provisions of this Division shall not affect any agreement by which the policyholder undertakes to reduce the insured risk or prevent the insured risk from increasing.

Division 4

Occurrence of Insured Event

§ 448. Notification of insured event

(1) A policyholder shall immediately notify the insurer of the occurrence of an insured event.

(2) An insurer may, after the occurrence of an insured event, request information from the policyholder which is necessary to determine the obligation to perform the contract. The insurer may request the submission of evidence insofar as the policyholder can reasonably be expected to submit such evidence.

§ 449. Consequences of failure to give notice of insured event

(1) If an insurer suffers damage as the result of a violation of the obligation provided for in § 448 of this Act, the insurer may reduce its performance obligation to the extent of such damage.

(2) If the policyholder intentionally violates the obligation provided for in § 448 of this Act, the insurer shall be released from its performance obligation.

§ 450. Insurer's performance obligation upon occurrence of insured event

(1) An insurer's obligation to perform a contract falls due after the occurrence of an insured event and the completion of the process of determining the extent of the insurer's performance.

(2) Irrespective of the provisions of subsection (1) of this section, the insurer's obligation

to perform a contract falls due if, two months after notifying the insurer of the insured event, the policyholder requests an explanation from the insurer as to why the process of determining the extent of performance has not yet been completed and the insurer fails to respond to the enquiry within one month.

(3) If the process of determining the extent of the insurer's performance is not completed within one month after notification being given of an insured event, the policyholder may, if the occurrence of the insured event is established, request that money be paid at the expense of the insurer's performance obligation in the minimum amount which the insurer should pay under the circumstances. The running of the term shall be suspended for the period during which completion of the process is hindered by circumstances arising from the policyholder.

§ 451. Requirement to pay policyholder penalty for late payment

Any agreement by which the insurer is not required to pay a fine for a delay in the performance of its obligation is void.

§ 452. Release of insurer from performance obligation upon violation of obligations by policyholder

(1) An insurer shall be released from the performance obligation if the policyholder, the insured person or the beneficiary intentionally caused the occurrence of the insured event. Any agreement which derogates therefrom is void.

(2) The insurer shall not rely on an agreement whereby the insurer is released from the performance obligation upon the occurrence of the insured event due to the policyholder violating an obligation if:

1) the policyholder has violated an obligation, other than the obligation to pay the insurance premium, which is to be performed with respect to the insurer prior to the occurrence of the insured event and the violation is caused by reason other than the fault of the policyholder or if the violation did not affect the occurrence of damage or the extent thereof;

2) the policyholder violates an obligation with respect to the insurer to reduce the insured risk or prevent an increase of the insured risk and the violation had no bearing on the occurrence of the insured event or the insurer's performance obligation;

3) the obligation was to be fulfilled with respect to the insurer after the occurrence of the insured event and the policyholder did not violate the obligation intentionally;

4) the obligation was to be performed with respect to the insurer after the occurrence of the insured event and the policyholder violated the obligation due to gross negligence, but the violation had no bearing on establishing the occurrence of the insured event or the insurer's performance obligation.

Division 5

Insurance Premium

§ 453. Period of insurance

A period of insurance is the period of time based on which insurance premiums are calculated. It is presumed that a period of insurance lasts for one year.

§ 454. Payment of insurance premium

(1) A policyholder shall pay the insurance premium or, in the event of an agreement to pay periodic insurance premiums, the first insurance premium immediately after entry into the contract.

(2) If the policyholder is to be issued with a policy, the policyholder may refuse to pay the insurance premium until the policy has been issued to the policyholder.

(3) It is presumed that the beginning of each new period of insurance is the due date for payment of the insurance premium for the subsequent period of insurance.

§ 455. Payment of insurance premium by third party

(1) An insurance premium which has become collectable or another amount payable pursuant to an insurance contract may, rather than by the policyholder, be paid by the insured person or the beneficiary or a pledgee in whose favour the claim of the policyholder against the insurer arising from the insurance contract is pledged. The insurer shall not refuse to accept payment from the above-mentioned person even if the insurer could refuse to accept the payment pursuant to the provisions of the General Part of this Act.

(2) If an insurance premium is paid by the insured person or the beneficiary or a pledgee, the insurer's claim for payment of the insurance premium against the policyholder transfers to the person who made the payment to the extent that the claim is satisfied. If a payment pursuant to an insurance contract is made by a pledgee, the pledgee's claim against the policyholder shall be secured by a pledge on the policyholder's claim against the insurer.

§ 456. Right to set-off insurance premium

An insurer may set off an insurance premium which has become collectable or another

claim which belongs to the insurer pursuant to a contract against the insurer's performance obligation even if the insurer owes performance of an obligation arising from the contract to a third party other than the policyholder. The insurer does not have such right with respect to the injured party in obligatory liability insurance.

§ 457. Delay in payment of first insurance premium

(1) If a policyholder fails to pay a single premium or the first premium within fourteen days after entry into the insurance contract, the insurer has the right, as long as the premium has not been paid, to withdraw from the contract. The insurer is presumed to have withdrawn from the contract if the insurer does not file an action to collect the insurance premium within three months after the premium becomes collectable.

(2) If the insurance premium or first insurance premium which has become collectable has not been paid by the time the insured event occurs, the insurer shall be released from its performance obligation.

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(3) The insurer shall not rely on the provisions of subsections (1) and (2) of this section if the insurer did not inform the policyholder of these consequences prior to entry into the contract.

§ 458. Delay in payment of subsequent insurance premiums

(1) If the policyholder fails to pay the second or a subsequent premium in time, the insurer may, in a format which can be reproduced in writing, set a term of at least two weeks or, if a structure is insured, one month for the policyholder to pay. In the notice, the legal consequences resulting from the expiry of the term shall be indicated.

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(2) If the insurer has set an additional term for the payment of an insurance premium and the insured event occurs after the expiry of the term and if at the time of occurrence of the insured event the policyholder is in default with payment of the insurance premium, the insurer shall be released from its performance obligation, unless failure to pay the insurance premium was due to circumstances beyond the control of the policyholder.

(3) If the insurer has set a term for payment specified in subsection (1) of this section and the policyholder fails to pay the insurance premium within the specified term, the insurer may cancel the insurance contract without prior notice. The insurer may state in the notice specified in subsection (1) of this section that it will consider the contract as having been cancelled upon expiry of the term if the policyholder fails to pay the premiums within the term.

(4) If the policyholder pays the insurance premium within one month as of the cancella-

tion of the contract or the expiry of the term for payment and the insured event does not occur before payment, the contract shall not be deemed to have been cancelled in the case specified in subsection (3) of this section.

§ 459. Payment of insurance premium upon termination of contract

If an insurance contract is terminated prematurely during a period of insurance by cancellation or withdrawal or for any other reason, the insurer is entitled to the insurance premium only for the period of time up to the termination of the contract.

§ 460. Insurer's right to demand increase of insurance premium

(1) If, upon entry into a contract, the policyholder has violated the obligation to notify provided for in § 440 of this Act, the insurer may demand payment of a reasonably higher insurance premium by the policyholder as of the beginning of the current period of insurance and if the insurer does not have the right to withdraw from the contract since the violation of the obligation to notify was not due to the fault of the policyholder and the higher premium is reasonable given the increased probability of the insured risk.

(2) The insurer shall not demand an increase of the insurance premium under the circumstances specified in subsection (1) of this section later than within one month as of becoming aware of the facts of which the policyholder did not inform the insurer.

§ 461. Policyholder's right to cancel contract upon increase of insurance premium

If the insurer increases the insurance premium pursuant to the terms of the insurance contract without changing the insurance cover, the policyholder may, within one month after receipt of the insurer's notice, cancel the insurance contract as of the effective date of the increase.

§ 462. Policyholder's right to demand reduction of insurance premium

(1) A policyholder may demand the reduction of the insurance premium for subsequent periods of insurance if a larger insurance premium was agreed upon due to circumstances increasing the insured risk and such circumstances cease to exist or become insignificant within the period of time between the submission of an application to enter into a contract and entry into the contract or thereafter or if the insured risk has continuously decreased during such period of time.

(2) The provisions of subsection (1) of this section shall also apply if a higher insurance premium was agreed upon because the policyholder provided erroneous information concerning circumstances increasing the insured risk.

Division 6

Insurance of Insured Risk of Third Party

§ 463. Rights of third party and policyholder with respect to insurer

(1) If insured risk relating to a third party is insured, the third party has the right to demand performance and all the rights related thereto from the insurer. The third party shall not dispose of such rights without the consent of the policyholder.

(2) The policyholder may dispose of the rights arising from the insurance contract for a third party in the policyholder's own name, including collecting the claim of the insured person against the insurer, waiving the claim or entering into transactions involving the claim.

(3) The insurer shall perform its obligation to the policyholder only if the policyholder proves that the third party had granted its consent for the insurance contract to be entered into.

§ 464. Preferential right of policyholder to have claims satisfied

A policyholder has a preferential right to satisfy the policyholder's claim against a third party and related to the insured object at the expense of a claim against the insurer to perform the insurance contract before the third party and obligees of the third party.

§ 465. Knowledge and conduct of insured person serving as that of policyholder

(1) If the knowledge and conduct of a policyholder have legal effect according to this Act, the knowledge and conduct of a third party shall be deemed equal to the knowledge and conduct of the policyholder upon insurance of an insured risk relating to the third party.

(2) Knowledge of the third party regarding a fact shall not be deemed equal to the knowledge of the policyholder if the contract was entered into without the knowledge or against the will of the third party.

Division 7

Termination of Insurance Contract and Expiry of Claims

§ 466. Withdrawal from insurance contract

Withdrawal from an insurance contract is permitted only in the cases provided by law.

§ 467. Invalidity of agreement to extend insurance contract

Any agreement under which an insurance contract which is not cancelled prior to expiry thereof is deemed to be extended for longer than one year is void.

§ 468. Ordinary cancellation of insurance contract entered into for indefinite period

(1) If an insurance contract has been entered into for an indefinite period of time, it may be cancelled by either party at the end of the current insurance period.

(2) The term for giving notice of cancellation shall be the same for both parties and may not be less than one month or longer than three months.

(3) Both parties may, by mutual agreement, waive their rights to cancel the contract for up to two years.

§ 469. Cancellation of long-term insurance contract

A policyholder may cancel an insurance contract entered into for a period of more than five years at the end of the fifth year or any subsequent year by giving at least three months' notice thereof, unless otherwise provided by law.

§ 470. Cancellation of contract due to violation of obligations of policyholder

(1) If a policyholder materially violates an obligation prescribed by the contract due to circumstances arising from the policyholder, the insurer may cancel the contract without prior notice within one month as of becoming aware of the violation, unless otherwise provided by law.

(2) If the insurer does not cancel the contract within the term specified in subsection (1) of this section, the insurer shall not rely on the agreement of being released from the performance obligation later in the event the policyholder violates an obligation.

§ 471. Cancellation of contract upon withdrawal of activity licence of insurer

A policyholder may cancel an insurance contract if the activity licence of the insurer is with-

drawn or suspended, unless otherwise provided by law.

§ 472. Expiry of contract due to bankruptcy of insurer

An insurance contract expires upon the declaration of the insurer as bankrupt, unless otherwise provided by law.

§ 473. Cancellation of contract due to insolvency of policyholder

If a policyholder is declared bankrupt or compulsory administration is ordered for an insured immovable, the insurer may cancel the insurance contract by giving at least one month's notice.

§ 474. Partial termination of contract

(1) If an insurer has the right to withdraw from a contract or cancel the contract only with respect to certain insured objects or persons, the insurer may do so with respect to the remaining objects or persons only if, under the circumstances, it can be presumed that the insurer would not have entered into the contract on the same terms solely for such objects or persons.

(2) If an insurer withdraws from a contract or cancels the contract with respect to certain objects or persons only, the policyholder has the right to cancel the entire contract by the end of the period of insurance during which the insurer's withdrawal or cancellation is effected at the latest.

§ 475. Expiry of claims arising from insurance contract

(1) The limitation period for claims arising from an insurance contract is three years. The limitation period commences from the end of the calendar year during which the claim falls due.

(2) If an insurer has been informed of a claim arising from an insurance contract, the running of the limitation period shall be suspended until the policyholder receives the decision made by the insurer concerning the claim. In this case, the claim expires ten years after the end of the calendar year during which the claim fell due.

(3) If a policyholder submits an application to an insurer for the performance of an obligation of the insurer arising from the insurance contract and the insurer notifies the policyholder in writing of the denial of the application, the insurer shall be released from the performance obligation if the policyholder does not file an action for compulsory performance of the obligation within one year as of the receipt of the response denying the application. The

insurer shall not be released from the performance obligation if the insurer does not inform the policyholder of the legal consequences of the expiry of the one year term in its response.

Chapter 24

Non-Life Insurance

Division 1

General Provisions

Subdivision 1

Contents of Contract

§ 476. Insurer's obligation to compensate

(1) In the case of non-life insurance and upon the occurrence of an insured event, the insurer shall, pursuant to the contract, compensate the insured person for any damage sustained by the insured person due to the insured event. If a thing is insured, the insurer shall, among other things, compensate for damage sustained as a result of eliminating the consequences of the insured event and for damage sustained if insured things are lost in the course of the insured event.

(2) If a body of things is insured, the insurance shall cover all the things which constitute the body of things upon the occurrence of the insured event.

(3) The insurer shall compensate for damage in money, unless the contract prescribes compensation for damage in another manner.

(4) Non-life insurance shall cover loss of income due to the occurrence of the insured event only if so agreed separately.

§ 477. Restriction of liability of insurer

The performance obligation of the insurer to a policyholder is limited to the actual extent of the damage even if the sum insured exceeds the insurable value at the time the insured event occurs.

§ 478. Lack of insurable interest

(1) Insurable interest is the interest of the policyholder in being insured against a certain insured risk.

(2) If there is no insurable interest upon the commencement of insurance cover or no insurable interest arises upon the insurance of future insured risk, the policyholder shall be released from the obligation to pay insurance premiums. In this case, the insurer may demand compensation for reasonable administrative expenses from the policyholder.

(3) If insurable interest ceases to exist after the commencement of insurance cover, the insurer shall be entitled to the insurance premiums which the insurer could have claimed had insurance been taken out only until the time when the insurer became aware of the cessation of insurable interest.

(4) If insurable interest ceases to exist due to the occurrence of the insured event, the insurer shall be entitled to the insurance premium for the current period of insurance.

Subdivision 2

Insurable Value

§ 479. Insurable value

(1) Insurable value is the value of insurable interest at the time an insured event occurs.

(2) The insurable value of a fungible movable is the sum of money needed to obtain a similar thing, taking reasonably into account the decrease in the value of the thing caused by depreciation.

(3) The insurable value of a structure is its ordinary local construction value from which a reasonable amount reflecting the condition, and in particular the age and depreciation, of the structure has been deducted.

§ 480. Agreed value

(1) Insurable value may be determined in advance as a fixed amount (agreed value).

(2) Agreed value shall not be determined upon the insurance of loss of income due to the occurrence of the insured event.

(3) Agreed value shall not be deemed to be insurable value if, at the time of the occur-

rence of the insured event, it differs significantly from the actual insured value. In this case, the actual insured value applies.

(4) If a structure is insured, the parties may agree to using the cost of restoring the insured structure as the insurable value of the structure.

§ 481. Over-insurance

If it becomes evident that the sum insured exceeds the insurable value to a significant extent (over-insurance), both the insurer and the policyholder may reduce the sum insured, together with a corresponding reduction of the insurance premium, in order to eliminate over-insurance. The sum insured and the insurance premium shall be reduced by making a corresponding declaration of intent to the other party to the contract.

§ 482. Under-insurance

If the sum insured is less than the insurable value at the time of the occurrence of the insured event (under-insurance), the insurer shall be liable for the damage in proportion to the relation of the sum insured to the insurable value at the time of the insured event.

Subdivision 3

Multitude of insurers

§ 483. Notification of entry into new insurance contract

A policyholder shall notify the insurer immediately if the same insured risk is insured by another insurer, including cases where loss of income is insured by one insurer and other damage by another insurer. The name of the other insurer and the sum insured shall be indicated in the notice.

§ 484. Co-insurance

If one and the same insurance or the insurance of insured risks relating to the same assets is divided in fixed parts between several insurers (co-insurance), each insurer is required to pay indemnities only in proportion to the part which it insures.

§ 485. Leading insurer in co-insurance

(1) In the case of co-insurance, the leading insurer, which is deemed to be the representative of the other insurers, shall be designated in the contract.

(2) The leading insurer shall forward declarations of intent prescribed by the contract and the policyholder shall forward such declarations the leading insurer. The leading insurer shall also organise the satisfaction of claims arising from the insurance contract.

(3) If no leading insurer is specified in the contract, the policyholder may select one of the co-insurers to be the leading insurer. The selection is deemed to have been made when the selected insurer is informed thereof.

§ 486. Multiple insurance

(1) If a policyholder insures the same insured risk with several insurers and the total amount of indemnities payable by the insurers would exceed the extent of the damage or the total of the sums insured would exceed the insurable value (multiple insurance), the insurers shall be liable as solidary obligors.

(2) In the case specified in subsection (1) of this section, each insurer shall be liable to the policyholder to the extent of the sum insured to be paid by the insurer pursuant to the contract, but the policyholder shall not claim more in total than the extent of damage.

(3) In the case specified in subsection (1) of this section, insurers shall be liable between themselves in proportion to the amount each of them has to pay the policyholder pursuant to the insurance contract.

(4) Contracts entered into by a policyholder who takes out multiple insurance with the intention of acquiring an unlawful patrimonial advantage shall be void. If the insurer was unaware of the invalidity of the contract at the time of entry into the contract, the insurer shall be entitled to insurance premiums until the end of the period of insurance during which the insurer became or should have become aware of the invalidity of the contract.

(5) Any agreement which derogates from the provisions of subsections (1)-(4) of this section is void.

§ 487. Elimination of multiple insurance

(1) If a policyholder unknowingly entered into a contract resulting in multiple insurance or if multiple insurance occurred later due to a decrease in insurable value, the policyholder may cancel the contract which was entered into later or reduce the sum insured to the amount not covered by earlier insurance. Together with a reduction of the sum insured, the policyholder may also reduce the insurance premium.

(2) In the case specified in subsection (1) of this section, the policyholder may only cancel the contract or reduce the sum insured immediately after becoming aware of multiple insurance.

(3) A contract shall be deemed to have been cancelled under the circumstances specified in subsection (1) of this section or the sum insured and the insurance premium shall be deemed to have been reduced by the end of the period of insurance during which the policyholder cancelled the contract or notified the insurer of the reduction of the sum insured and the insurance premium.

Subdivision 4

Insured Event

§ 488. Obligation to prevent and reduce damage and to ensure possibility of establishing damage

(1) Upon the occurrence of an insured event, the policyholder shall, insofar as is possible, attempt to prevent and reduce any damage and, in so doing, observe the instructions given by the insurer. If circumstances permit, the policyholder shall ask the insurer for such instructions.

(2) Prior to damage being established, the policyholder shall not make any changes with respect to the damaged thing without the permission of the insurer if such changes would hinder or render impossible establishment of the cause or extent of the damage, unless the change is necessary to reduce the damage or in the public interest.

(3) If the policyholder violates the obligation specified in subsection (1) or (2) of this section and the insurer sustains damage as the result thereof, the insurer shall have the right to reduce the indemnity by the extent of the damage sustained.

§ 489. Establishment of damage

(1) The insurer shall immediately establish the extent of damage to be compensated for.

(2) If one of the parties to the contract refuses to participate in establishing the extent of the damage or if the parties are unable to agree on the extent of the damage, they may turn to a court for the extent of the damage to be established.

(3) An insurer shall not lose the right to contest the policyholder's claim for compensation if the insurer participates in establishing the extent of damage.

(4) Any agreement which restricts the policyholder's right to be assisted by a representative in establishing the extent of damage is void.

§ 490. Expert assessment

(1) An agreement between an insurer and a policyholder pursuant to which the insurer's obligation to pay an indemnity or the extent of damage is to be determined by an expert shall be valid only if the expert is appointed by a third party not involved in the matter or if the insurer and the policyholder both appoint an equal number of experts.

(2) Neither the insurer nor the policyholder shall rely on the insurer's obligation to pay the indemnity or the extent of damage being established by an expert, if this is obviously significantly different from the actual circumstances. Any agreement deviating therefrom is void.

(3) In the case specified in subsection (2) of this section and also if the expert cannot or will not establish the extent of damage or delays so doing, the parties may turn to a court for the extent of the damage to be established.

§ 491. Compensation for expenditure to policyholder

(1) If an insurer has to compensate for damage sustained, the insurer shall also compensate for the expenses incurred by the policyholder in connection with establishment of the extent of the damage. The insurer need not compensate the policyholder for the expenses of hiring an expert or advisor if the policyholder was not required to hire an expert or advisor pursuant to the contract.

(2) In addition to the provisions of subsection (1) of this section, the insurer shall compensate the policyholder for expenses incurred in connection with the prevention or reduction of damage pursuant to the provisions of subsection 488 (1) of this Act which the policyholder deemed necessary under the circumstances even if these expenses failed to produce the desired result. The insurer shall compensate for expenses incurred according to the insurer's instructions even if such expenses in combination with the other indemnities exceed the sum insured. If the policyholder so requests, the insurer shall, pursuant to the instructions of the insurer, make an advance payment of the expenses to be incurred.

(3) In the case of under-insurance, the insurer shall compensate for expenses only in the proportion provided for in § 482 of this Act.

§ 492. Transfer of claim

(1) A claim for the compensation of damage against a third party which belongs to a policyholder or the insured person shall transfer to the insurer to the extent of damage to be compensated by the insurer.

(2) If the policyholder waives a claim against a third party or waives the right which secures such claim, the insurer shall be released from its performance obligation with respect to the policyholder insofar as the policyholder could have claimed compensation on the basis of the claim or right.

(3) If the policyholder has a claim against his or her ascendant, descendant or spouse or another family member who lives with the policyholder, the insurer shall have the rights provided for in subsections (1) and (2) of this section only insofar as the liability of the relevant person is insured or if the person caused damage intentionally.

§ 493. Performance of contract after occurrence of insured event

(1) After the occurrence of an insured event, the insurer shall be liable for damage caused by a later insured event only to the extent of the sum insured remaining after compensating the earlier damage. For future periods of insurance, the insurer is entitled to insurance premiums which are smaller than the previous insurance premiums in the same proportion as the residual sum insured is smaller than the initial sum insured.

(2) After the occurrence of the insured event, either party to the contract may cancel the contract within one month as of completion of the process of establishing the extent of damage. The insurer shall give one month's notice of cancellation of the contract. The policyholder may cancel the contract on these grounds such that the contract terminates not later than by the end of the current period of insurance.

(3) An agreement which derogates from the provisions of subsection (2) of this section shall only be valid if the right to cancel is the same for both parties.

Subdivision 5

Transfer of Insured Thing

§ 494. Continuation of insurance upon transfer of thing

(1) If a policyholder transfers an insured thing, all the policyholder’s rights and obligations arising from the insurance contract transfer to the acquirer of the thing.

(2) The transferor and acquirer of the thing shall be solidarily liable to the insurer for payment of the insurance premium for the period of insurance during which the transfer takes place.

(3) The policyholder’s rights and obligations arising from the insurance contract shall not be deemed to have been transferred with respect to the insurer until the insurer becomes aware of the transfer of the insured thing.

§ 495. Cancellation of insurance contract upon transfer of thing

(1) An insurer may, upon the transfer of an insured thing, cancel the insurance contract

with respect to the acquirer of the thing within one month as of becoming aware of the transfer of the thing if the insurer gives at least one month's notice of the cancellation.

(2) The acquirer of an insured thing may cancel the insurance contract by the end of the current period of insurance within one month as of acquiring the thing. If the acquirer did not know that the thing is insured, the right to cancel expires one month after the time of becoming aware of the insurance.

(3) If an insurance contract is cancelled on the grounds provided for in subsection (1) or (2) of this section, the transferor of the thing shall pay the insurer insurance premiums, but not for longer than for the period of insurance during which the insurance contract terminates. In such case, the acquirer shall not be liable for the payment of insurance premiums.

§ 496. Notification of transfer

(1) Upon the transfer of an insured thing, the transferor or acquirer of the thing shall notify the insurer of the transfer immediately.

(2) If the insurer is not notified of the transfer of a thing in time, the insurer shall be released from its performance obligation if the insured event occurs more than a month after the time when the insurer should have received the corresponding notice.

(3) The provisions of subsection (2) of this section shall not apply if:

1) the insurer was aware of the transfer at the time when the insurer should have been notified;

2) at the time of the occurrence of the insured event, the insurer’s right to cancel the contract has expired and the insurer has not exercised the right.

§ 497. Agreement which derogates to detriment of acquirer

(1) Any agreement which derogates from the provisions of §§ 494-496 of this Act to the detriment of the acquirer is void.

(2) A contract may prescribe that the notice regarding the transfer of a thing and the cancellation of a contract on these grounds shall be in a particular format.

§ 498. Application of provisions

The provisions of §§ 494-497 of this Act shall also apply to the transfer of insured things in execution proceedings and bankruptcy proceedings.

Subdivision 6

Liability of Insurer to Mortgagee upon Insurance of Structures

§ 499. Notification obligation of insurer and policyholder

(1) A policyholder shall immediately notify the insurer who insured a structure of any encumbrance of the registered immovable under the structure with a mortgage.

(2) If, upon the insurance of a structure, the immovable on which the structure is located is encumbered with a mortgage, the insurer shall immediately notify the mortgagee known to the insurer in a format which can be reproduced in writing of the setting of a term for the policyholder to pay the insurance premium if the policyholder has failed to pay the premium and of the cancellation of the contract.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) The insurer shall notify the mortgagee known to the insurer of the occurrence of an insured event within one week as of becoming aware of the occurrence of the insured event, unless the damage is insignificant to the mortgagee.

(4) The insurer shall inform the mortgagee of the existence of insurance cover and the size of the sum insured immediately at the request of the mortgagee.

§ 500. Validity of payment of indemnity with respect to mortgagee

(1) If the insurance contract of a structure prescribes that the policyholder is required to use the insurance indemnity to restore the structure, the payment of the insurance indemnity for other purposes or without ensuring restoration of the structure shall not be valid with respect to the mortgagee and the mortgagee may request another payment from the insurer, unless the mortgagee consents to payment of the insurance indemnity in such manner.

(2) The consent specified in subsection (1) of this section shall be deemed to have been granted by the mortgagee if the mortgagee has been informed, in a format which can be reproduced in writing, of the intention to pay the indemnity but has not responded thereto within one month.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

§ 501. Rights of mortgagee upon violation of obligations by policyholder

If a policyholder violates an obligation arising from the insurance contract and, as a result thereof, the insurer is released from its performance obligation with respect to the policyholder, the insurer shall still perform the obligation to the mortgagee, unless the insurer is

released from its performance obligation with respect to the policyholder because the policyholder has failed to pay the insurance premiums or intentionally caused the insured event.

§ 502. Transfer of mortgage

If an insurer satisfied a claim to the mortgagee of a policyholder pursuant to § 501 of this Act, the mortgage shall transfer to the insurer to the extent that the insurer satisfied the claim. The insurer shall not exercise rights arising from the mortgage to the disadvantage of a mortgagee of the same or lower ranking with respect to whom the insurer's performance obligation still remains.

§ 503. Application of provisions to real encumbrance

The provisions of §§ 500-502 of this Act shall apply correspondingly if an immovable is encumbered with a real encumbrance.

§ 504. Inapplicability of mortgagee's rights to policyholder

The rights of mortgagees provided for in §§ 500-503 of this Act shall not be exercised on the basis of mortgages where the mortgagee is a policyholder.

Division 2

Goods in Transit Insurance

§ 505. Insured risks

If the risk of transporting goods on land or an internal water body is insured, it is presumed that the insurance covers all risks relating to the goods.

§ 506. Restriction of liability of insurer

(1) An insurer shall not compensate for damage which:

1) is caused by the policyholder or by the consignor or consignee of the goods;

2) is caused by the nature of the goods or by their defective packaging;

3) is caused by vermin.

(2) If circumstances specified in subsection (1) of this section have increased the damage, the insurer shall only compensate for damage to the extent for which the insurer would have been liable if the circumstances had not occurred.

§ 507. Duration of insurance

Insurance commences when a carrier accepts goods for transport and continues for as long as the goods are in the carrier's care.

§ 508. Insurable value of goods

(1) The insurable value of goods is the usual value of the goods at the place of dispatch at the time of commencement of insurance. This is also deemed to be the insurable value at the time of occurrence of the insured event.

(2) If goods are damaged, the actual value of the goods at the place of delivery shall be deducted from the value the goods would have had at the place of delivery had they not been damaged. The proportion of insurable value corresponding to the decrease in the value of the goods shall be deemed to be the extent of the damage.

§ 509. Restriction of cancellation of contracts

Upon the insurance of goods in transit, the insurer shall not cancel the insurance contract during transportation of the goods due to the probability of the insured risk increasing regardless of the intent of the policyholder or due to the transfer of the insured goods.

Division 3

Liability Insurance

Subdivision 1

General Provisions

§ 510. Definition of liability insurance

In liability insurance, the insurer shall, in place of the policyholder, perform the obligation to compensate for damage caused by the policyholder to a third party (injured party) as the result of an insured event which occurs during the period of validity of the insurance, and to cover the costs of legal assistance.

§ 511. Covering costs of legal assistance

(1) Insurance shall cover the costs of legal assistance incurred by a policyholder against whom a claim is filed to the extent that the policyholder could consider such costs necessary to protect the rights of the policyholder in court and extra-judicially, even if the claim proves to be unfounded.

(2) Insurance shall also cover costs incurred for the protection of the interests of the policyholder in criminal proceedings or administrative court proceedings if the facts established in the course of the proceedings may constitute a basis for the civil liability of the policyholder with respect to the injured party, insofar as such costs are incurred according to the insurer's instructions. The insurer shall cover the costs in advance at the request of the policyholder.

(3) If the sum insured is agreed upon, the insurer shall cover the costs incurred in relation to a court action which the insurer requested from or recommended to the policyholder and the costs of defence specified in subsection (2) of this section even if such costs together with the rest of the indemnity exceed the sum insured. The same shall apply to interest payable for a delay initiated by the insurer in the satisfaction of a claim of the injured party.

(4) If the policyholder has the right to avoid compulsory execution of a court judgment by providing security or depositing money, the insurer shall, at the request of the policyholder, provide security for the compulsory execution or deposit money up to the extent of the sum insured and, in the case specified in subsection (3) of this section, the extent of costs related to the court action. The insurer shall be released from the obligation to provide security or deposit money if the insurer admits that the claim of the injured party against the policyholder is justified.

§ 512. Insurance of liability arising from economic activities

(1) Insurance of the liability arising from a policyholder's economic activities covers the liability of persons employed for service or hired by representatives of the policyholder and the policyholder to manage an enterprise or a part thereof or to exercise supervision over an enterprise.

(2) If an enterprise is transferred or use thereof is granted to another person, the policyholder’s rights and obligations arising from the contract shall transfer to the transferee, unless such rights and obligations are related to the period of time prior to the transfer or grant of use. The provisions of subsections 494 (2) and (3) of this Act and §§ 495–497 of this Act shall apply accordingly.

§ 513. Release of insurer from performance obligation

An insurer shall be released from its performance obligation if the policyholder intentionally and unlawfully caused the occurrence of the event due to which the liability of the policyholder with respect to the injured party arises.

§ 514. Notification of circumstances

(1) A policyholder shall notify the insurer of circumstances which may result in the occurrence of an insured event and of a claim being filed against the policyholder by an injured party within one week as of the time when the policyholder became aware of the circumstances or the claim being filed.

(2) Sending the notice within the term specified in subsection (1) of this section shall suffice to make it timely.

(3) The policyholder shall immediately notify the insurer of the initiation of judicial or other proceedings against the policyholder which may result in the liability of the insurer and of circumstances which may constitute the basis for a claim being filed against the policyholder.

§ 515. Payment of indemnity

(1) The insurer must pay the indemnity without delay but not later than within two weeks as of the satisfaction of the claim of the injured party by the policyholder or as of the claim being established by a court judgment, admission of the claim or a compromise agreement. If costs are to be compensated for pursuant to § 511 of this Act, the insurer shall cover the costs within two weeks as of being notified of the total size of the costs.

(2) Any agreement between the insurer and policyholder is void if, under the agreement, the insurer is to be released from the performance obligation if the policyholder satisfies the claim of the injured party or admits such claim without the consent of the insurer if, given the interests of the injured party, failure to satisfy or admit such claim is clearly contrary to the principles of good faith.

§ 516. Payments by instalment

If the policyholder is to pay the injured party in instalments and if the sum insured is less than the estimated total size of the instalments, the policyholder may only demand the corresponding part of the payments by instalment from the insurer.

§ 517. Rights of injured party

(1) The insurer has the right to pay the indemnity directly to the injured party if:

1) the amount payable by the policyholder to the injured party is determined by a court judgment or a compromise agreement, and

2) the insurer informs the policyholder of its intention in advance.

(2) The insurer shall pay the indemnity directly to the injured party if the policyholder so requests.

(3) Disposal of a claim of the policyholder against the insurer is void with respect to the injured party. The same shall apply to the disposal of a claim in execution proceedings or if the claim is disposed of in order to secure an action.

(4) If the circumstances which caused the policyholder's liability result in claims from several injured parties and the total size of such claims exceeds the sum insured, the insurer shall satisfy the claims in proportion to the size of the claims.

§ 518. Rights of injured party upon bankruptcy of policyholder

Upon the bankruptcy of a policyholder, an injured party has the right to satisfy a claim against the policyholder at the expense of a claim for compensation against the insurer before the other obligees of the policyholder.

§ 519. Cancellation of contract after occurrence of insured event

(1) Either party may cancel a liability insurance contract if, after the occurrence of an insured event, the insurer has admitted its obligation to compensate the policyholder or has refused to compensate after the indemnity became collectable.

(2) A contract may be cancelled within one month after the admission of the obligation to compensate or refusal to compensate. The provisions of § 493 of this Act shall also apply.

Subdivision 2

Obligatory Liability Insurance

§ 520. Obligation to enter into contract

An insurer shall enter into a liability insurance contract required by law (obligatory liability insurance) if the policyholder meets the requirements prescribed in the standard terms.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

§ 521. Claim for compensation of damage of injured party

(1) An injured party may demand the compensation of damage caused thereto by the policyholder from both the policyholder and the insurer. Compensation for damage may be requested from the insurer only in monetary form.

(2) If a claim for the compensation of damage is filed against both the policyholder and the insurer, they shall be liable as solidary obligors. In the relationship between the insurer and the policyholder, only the insurer shall be liable. If the insurer is released from its performance obligation, only the policyholder shall be liable for performance of the obligation in the relationship between the insurer and the policyholder.

(3) The insurer may present the same objections against the claim of an injured party as the policyholder.

(4) The claim of an injured party against an insurer shall expire after the same term as a claim against a policyholder. Suspension or interruption of the limitation period with respect to the policyholder shall also apply to the insurer and vice versa.

(5) The insurer shall not refuse to satisfy the claim of an injured party on the grounds that the insurer has been released from its liability to the policyholder in part or in full.

(6) If it is established by a court judgment which has entered into force that an injured party does not have the right to claim for compensation of damage, this shall apply with respect to both the policyholder and the insurer.

(7) (Repealed - 19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

§ 522. Notification obligation of injured party

(1) An injured party shall notify the insurer within two weeks as of becoming aware of the insurer and in a format which can be reproduced in writing of an insured event and of the filing of a claim against the policyholder and shall notify the insurer immediately of the filing of an action against the policyholder.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) The insurer may request information necessary to determine the cause and extent of damage from the injured party. The injured party shall provide information only insofar as

it is reasonable to expect that such information can be obtained from the injured party.

§ 523. Violation of obligation by injured party

(1) If an injured party fails to give notice in a timely manner of an insured event or the filing of an action against the policyholder or violates the obligation specified in subsection 522 (2) of this Act, the insurer shall not be liable for the compensation of damage to an extent exceeding the liability of the insurer had the insurer been notified of the insured event or the filing of an action in a timely manner.

(2) If the obligation specified in subsection 522 (2) of this section is violated, the insurer may rely on the provisions of subsection (1) of this section only if the injured party has been expressly informed of the consequences of the violation beforehand in a format which can be reproduced in writing.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) The restriction on the liability of the insurer provided for in subsection (1) of this section shall apply accordingly if the policyholder enters into compromise agreement with an injured party or admits the claim of an injured party without the consent of the insurer. The restriction on the liability of the insurer shall not apply if, given the interests of the injured party, entry into the compromise agreement or failure to admit the claim would clearly be contrary to the principles of good faith.

§ 524. Transfer of insurance contract

(1) In the event of obligatory insurance of a liability which may arise from a thing and if the right of ownership of the thing is transferred, the policyholder's rights and obligations arising from the insurance contract transfer to the acquirer of the thing. The provisions of §§ 494–498 of this Act shall apply accordingly.

(2) If, in the case specified in subsection (1) of this section, the acquirer of the thing enters into a new obligatory liability insurance contract, the insurance contract which transferred to the acquirer shall expire.

§ 525. Limitation of release from performance

(1) If, upon the insurance of insured risk relating to a third party, the insurer is released from its performance obligation with respect to the policyholder, the insurer shall only be released from its performance obligation with respect to the third party if the circumstances which are the basis for such release arise from the third party or if the third party was or should have been aware of these circumstances.

(2) If the insurer has to perform its obligation with respect to a third party under the cir-

cumstances specified in subsection (1) of this section, the insurer may, upon performance of the obligation with respect to the third party, demand that the policyholder compensate any expenses incurred in order to perform the obligation.

Division 4

Legal Expenses Insurance

§ 526. Obligations of insurer

(1) In legal expenses insurance, the insurer shall, to the extent prescribed by the contract, protect the legal interests of the policyholder upon the occurrence of an insured event and cover the costs of legal assistance, procedure expenses and other similar expenses incurred as a result thereof. It is presumed that the insurance covers legal assistance both in court and in administrative proceedings and outside administrative agencies.

(2) The provisions of this Division concerning insurers shall also apply to insured persons who are not policyholders.

§ 527. Information in insurance contract

If insured risks in the field of legal expenses insurance are insured together with other insured risks, the scope of the insurance cover in legal expenses insurance and the insurance premiums payable therefor shall be indicated separately in the insurance contract. If the insurer entrusts an independent loss adjuster with the task of managing the performance of obligations arising from an insurance contract, this shall also be indicated in the contract.

§ 528. Choice of advocate

(1) The policyholder may choose an advocate to represent the policyholder and to protect the interests of the policyholder in judicial or administrative proceedings or to protect the legal interests of the policyholder in any other manner, including in the policyholder's relationship with the insurer.

(2) If the policyholder applies to the insurer for the appointment of an advocate, the insurer shall expressly inform the policyholder of the right specified in subsection (1) of this section.

(3) Persons other than advocates may be appointed to represent the policyholder in judicial or administrative proceedings or to protect the legal interests of the policyholder in any other manner only by agreement with the insurer.

§ 529. Provision of expert assessment

(1) An insurance contract shall prescribe the provision of expert assessment which complies with the conditions provided for in § 490 of this Act to assess the prospects of legal assistance being effective or being in bad faith and which the policyholder may use if the insurer refuses to perform the obligation because, in the insurer's opinion, the prospects of legal assistance being effective are not sufficient or if legal assistance would be in bad faith.

(2) If the insurer refuses to perform its obligation, the insurer shall inform the policyholder of the right to obtain expert assessment.

(3) If the provisions of subsection (1) or (2) of this section are not complied with, the policyholder's need for legal assistance in this particular case shall be deemed to have been recognised by the insurer.

(4) The limitation period of the policyholder's claim shall be suspended while the expert assessment provided for in subsection (1) of this section is provided, although the period shall not be suspended for longer than three months.

§ 530. Insurer's obligation to inform policyholder of insurance cover

(1) If a policyholder submits a claim arising from subsection 526 (1) of this Act to an insurer, the insurer shall inform the policyholder within two weeks and in a format which can be reproduced in writing of whether the insurer will perform the obligation arising from the contract. Refusal to perform the obligation shall be justified and the facts or the provisions of law or of the contract which are the basis for refusal shall be indicated.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) If the policyholder has not forwarded all the information necessary to verify the claim arising from subsection 526 (1) of this Act to the insurer, the insurer may demand the submission of additional documents during the term provided for in subsection (1) of this section. In such case, the term provided for in subsection (1) of this section shall begin to run as of the submission of documents.

(3) If the insurer fails to prove that the insurer performed the obligation provided for in subsection (1) of this section, the insurer shall compensate for all costs for legal assistance which are covered by the insurance and which have been incurred during the period of time from the expiry of the term specified in subsection (1) of this section to communication of the insurer's position to the policyholder.

§ 531. Transfer of insurance contract

If the costs for legal assistance relating to the enterprise of a policyholder are insured and

the enterprise is transferred or use thereof is granted to another person, the policyholder's rights and obligations arising from the insurance contract transfer to the transferee or the person to whom use thereof is granted. The provisions of §§ 494 –498 of this Act shall apply accordingly.

Chapter 25

Life Insurance

§ 532. Insurer's performance obligation

In life insurance, the insurer shall, pursuant to the contract, pay the beneficiary the agreed amount as a lump sum payment or in instalments if the insured person attains a certain age, marries, dies or has a child.

§ 533. Restrictions on insuring life of third party

(1) A life insurance contract relating to the death of a third party shall only be valid if the third party grants written consent to the contract.

(2) If the third party is a person with restricted active legal capacity and the policyholder is his or her legal representative, the policyholder may represent the third party in the grant of consent only with the permission of the guardianship authority.

§ 534. Consequences of stating incorrect age

If the age of the insured person is stated incorrectly and, as a result thereof, the insurance premium is established at too low a level, the liability of the insurer shall be reduced in proportion to the relation of the insurance premium corresponding to the actual age of the person to the insurance premium agreed upon.

§ 535. Increase in probability of insured risk

(1) Only a change in circumstances relating to the insured risk which is explicitly deemed to be an increase in the probability of the insured risk pursuant to a written agreement shall be deemed to be an increase in the probability of the insured risk.

(2) The insurer shall not rely on an increase in the probability of the insured risk if three years have passed since the increase of the risk, unless the policyholder intentionally violated the obligation to obtain the consent of the insurer or to notify the insurer.

§ 536. Specifications of cancellation of contracts

A policyholder may at any time cancel a life insurance contract as of the end of the current insurance period.

§ 537. Appointment and change of beneficiary

(1) A policyholder has the right to determine a third party as beneficiary without the consent of the insurer and to change that person even if the beneficiary is specified in the contract.

(2) The beneficiary shall have the right to demand performance by the insurer only upon the occurrence of the insured event.

(3) If the beneficiary dies before the occurrence of the insured event, the insurer shall perform the obligation with respect to the policyholder or the successors of the policyholder unless the policyholder specifies otherwise.

§ 538. Several beneficiaries

If several persons have been appointed beneficiaries without their respective shares having been specified, they shall be deemed to be beneficiaries in equal shares. Any share which a beneficiary refuses to accept or cannot accept shall be added to the shares of the other beneficiaries.

§ 539. Release of insurer from performance obligation

In the case of insurance for the event of death, the insurer shall be released from its performance obligation if the insured person commits suicide within two years as of entering into the contract. The insurer's obligation remains valid if the insured person who commits suicide has a pathological mental condition which precludes free will.

§ 540. Death of insured person caused by policyholder or beneficiary

(1) In the case of a life insurance contract entered into for the event of the death of a third party, the insurer shall be released from its performance obligation if the death of the third party is caused by an intentional unlawful act by the policyholder.

(2) If a beneficiary is appointed in a life insurance contract entered into for the event of death and the beneficiary causes the death of the insured person by an intentional unlawful

act, the beneficiary shall be deemed not to have been appointed.

§ 541. Notification of insured event

(1) The insurer need not be notified of an insured event if the attainment by the insured person of a certain age has been agreed upon as the insured event.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(2) If a third party is entitled to performance of the obligation by the insurer, the third party shall give notice of the insured event and provide information and submit evidence concerning the insured event.

§ 542. Change in size of insurance premium

(1) An insurer has the right to increase an insurance premium if this is necessary to ensure continuous performance of its obligations arising from insurance contracts.

(2) The insurer shall not amend a contract solely on the grounds that the insured person is ageing or his or her state of health is deteriorating. The parties may, however, agree that, when the insured person attains a certain age, the initial insurance premium will be increased to an amount which, according to the relevant insurance premium rate, is payable with regard to an insured person who enters into an insurance contract at that age.

(3) Any declaration by the insurer which increases the insurance premium retroactively is void.

(4) An increase in the insurance premium shall not take effect earlier than one month after the policyholder is notified of the increase.

§ 543. Conversion of insurance into premium-free insurance

(1) A policyholder may apply for the insurance to be converted as of the end of the current period of insurance in such a manner that the policyholder need not pay any more insurance premiums during the period of validity of the contract but that the insurer shall still perform the obligation arising from the insurance contract on account of the insurance premiums already paid (premium-free insurance).

(2) The policyholder may demand that the insurance be converted into premium-free insurance if the minimum amount agreed upon by the insurer and the policyholder has been reached on account of the insurance premiums already paid. If the minimum amount of insurance premiums agreed upon has not been reached, the policyholder shall be entitled to receive the surrender value of the insurance from the insurer.

§ 544. Insurer's performance obligation in premium-free insurance

(1) If insurance is converted into premium-free insurance, the extent of the insurer's performance obligation as at the end of the current period of insurance shall be calculated according to the recognised principles of actuarial mathematics.

(2) If insurance is converted into premium-free insurance, the insurer may make deductions from its performance obligation only to the extent agreed upon by the parties, provided that such deductions are reasonable.

§ 545. Conversion of insurance into premium-free insurance if insurer cancels contract

(1) If the insurer cancels an insurance contract due to failure to pay the second or a subsequent insurance premium, the insurance is converted into premium-free insurance.

(2) In the case provided for in subsection 458 (2) of this Act, the insurer shall be required to perform to the extent which would have been the extent of the insurer's obligation if the insurance had been converted into premium-free insurance by the time of the occurrence of the insured event.

(3) The notice which, pursuant to the provisions of § 458 of this Act, sets a term for payment of the insurance premium shall contain information which states that failure to pay the outstanding insurance premium in time will result in the insurance being converted into premium-free insurance.

§ 546. Surrender value

(1) If a life insurance contract terminates due to withdrawal or cancellation or if the contract is recognised as void or if one of the parties annuls the contract on the bases provided for in the General Part of the Civil Code Act, the insurer shall pay the surrender value of the insurance to the policyholder. This shall not apply if the parties agree to convert the contract into premium-free insurance.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) The insurer shall pay the surrender value even if the insurer has been released from its performance obligation after the occurrence of the insured event. The insurer need not pay the surrender value in the case specified in subsection 540 (1) of this Act.

(3) The surrender value of insurance shall be calculated according to the recognised principles of actuarial mathematics as at the end of the current period of insurance.

(4) Any insurance premium arrears shall be deducted from the surrender value upon calculation thereof. The insurer may make deductions from the surrender value only to the

extent agreed upon by the parties, provided that such deductions are reasonable.

§ 547. Beneficiary becomes policyholder

(1) The beneficiary may replace the policyholder in an insurance contract with the consent of the policyholder if the policyholder's claim against the insurer for the performance of the insurer's obligation is seized or if an execution proceeding is initiated with respect to such claim or if the policyholder is declared bankrupt.

(2) Upon taking the place of the policyholder in the contract in the case provided for in subsection (1) of this section, the beneficiary shall satisfy the claims of the policyholder's obligees to the extent of the surrender value of the insurance which the policyholder would have received from the insurer if the policyholder had cancelled the contract at the time of seizure, initiation of the execution proceeding or declaration of bankruptcy.

(3) If no beneficiary is named, the policyholder's spouse and children shall have the rights and obligations provided for in subsections (1) and (2) of this section.

(4) Taking the place of the policyholder in the contract is effected by notifying the insurer thereof. Notice may be given within one month as of the time when the person who is entitled to take the place of the policyholder in the contract became aware of the seizure, initiation of the execution proceeding or declaration of bankruptcy.

(5) Any agreement which derogates from the provisions of subsections (1)-(4) of this section to the detriment of the beneficiary is void.

Chapter 26

Accident Insurance

§ 548. Insurer's obligation to compensate

In the case of accident insurance, the insurer shall, upon the occurrence of an accident, pay the amount specified in the contract as a lump sum payment or in instalments, compensate for patrimonial damage caused by the occurrence of the insured event or perform the contract in any other agreed manner.

§ 549. Application of life insurance and non-life insurance provisions

(1) If payment of an agreed amount of money rather than compensation for damage is prescribed as the insurer's performance obligation, the policyholder shall have the right to appoint a beneficiary pursuant to the provisions of §§ 537 and 538 of this Act.

(2) The parties to the contract may agree upon the application of relevant provisions of non-life insurance insofar as such provisions do not contradict the nature of accident insurance.

§ 550. Persons covered by accident insurance

(1) If an accident involving a third party is insured against, it shall be presumed that the third party is the insured person.

(2) If a policyholder has taken out insurance against an accident involving a third party in order to insure the insured risk of the policyholder, the written consent of the third party is needed for the contract to be valid. If the third party is a person with restricted active legal capacity and the policyholder is his or her legal representative, the policyholder may represent the third party in the grant of consent only with the permission of the guardianship authority.

§ 551. Intentional causing of accident

(1) If a policyholder has taken out insurance against an accident involving a third party in order to insure the insured risk of the policyholder, the insurer shall be released from its performance obligation if the accident is caused by an intentional unlawful act of the policyholder.

(2) If the beneficiary causes an accident by an intentional unlawful act, the beneficiary shall be deemed not to have been appointed.

§ 552. Deterioration of health of insured person

It is presumed that the health of the insured person deteriorated due to circumstances beyond his or her control.

§ 553. Notification obligation of beneficiary

If a beneficiary is entitled to performance of the obligation by the insurer, the beneficiary shall give notice of the insured event and provide information and submit evidence concerning the insured event.

Chapter 27

Sickness Insurance

§ 554. Classes of sickness insurance

Sickness insurance may be provided as:

1) medical expenses insurance;

2) hospital insurance;

3) insurance against incapacity for work;

4) long-term care insurance;

5) insurance of another class.

§ 555. Obligations of insurer

(1) In the case of medical expenses insurance, the insurer shall, to the extent of the sum insured, compensate the insured person for medical expenses which are incurred as a result of an illness or accident and are medically necessary and perform other contractual obligations. The costs of out-patient examinations conducted in order to establish and prevent illnesses shall also be compensated for.

(2) In the case of hospital insurance, the insurer shall pay the insured person the agreed hospital daily allowance agreed for in-patient treatment which is medically necessary.

(3) In the case of insurance against incapacity for work, the insurer shall compensate the insured person for loss of income or a reduction thereof due to incapacity for work caused as a result of an illness or accident by paying the insured person a daily allowance, making periodic payments or paying a lump-sum amount, as agreed.

(4) In the case of long-term care insurance and if the need to provide care arises, the insurer shall compensate for the costs of caring for the insured person to the extent agreed upon (long-term care expenses insurance) or pay an agreed daily allowance for the care (long-term care daily allowance insurance).

§ 556. Application of non-life insurance provisions

If sickness insurance cover is provided pursuant to the principles of non-life insurance, the provisions concerning non-life insurance shall apply to sickness insurance accordingly. The provisions of §§ 443-447 and § 460 of this Act do not apply to sickness insurance.

§ 557. Duration of sickness insurance contract

(1) Sickness insurance contracts are entered into for an unspecified term.

(2) An insurance contract against incapacity for work may be entered into for a specified term but not for less than three years.

(3) A sickness insurance contract may be entered into for a specified term if it is related to training, stay in a foreign state, travelling or the performance of work or an activity during a specified term.

§ 558. Waiting periods

(1) If the parties agree that the obligations of the insurer commence after a certain period of time has passed from the insurance contract being entered into (waiting period), the waiting period shall not exceed five months in the case of medical expenses insurance, hospital insurance and insurance against incapacity for work and nine months in the case of childbirth and health services related thereto. In the case of long-term care insurance, the waiting period shall not exceed three years.

(2) If the insured event occurs before the end of the waiting period, the insurer shall be required to perform only if the policyholder proves that the illness occurred or that the child was conceived only after entry into the contract.

§ 559. Insurance of born child

If, at the time of the birth of a child, at least one of the parents is covered by sickness insurance, the insurer shall enter into an insurance contract to insure the child as of his or her birth without any additional insurance premiums or waiting periods, provided that an application for the child to be insured is submitted not later than two months after his or her date of birth. The insurer has the obligation to insure the child to the extent that the insurance cover applied for for the child does not exceed the scope of the insurance cover of the insured parent.

§ 560. Change in size of insurance premium

(1) An agreement under which the insurer may, after entry into a sickness insurance contract, unilaterally increase the insurance premium or unilaterally change the scope of insurance cover, including establishing the excess which the policyholder has to pay, shall be valid only if agreement is reached to change the insurance premium or the scope of insurance cover if any of the following circumstances change:

1) circumstances which are specified in the insurance contract as basis for the calculation of the insurance premium and which are beyond the control of the parties;

2) the average life expectancy of the insured persons;

3) the frequency at which the insurer's performance obligation is used by persons insured according to this insurance premium rate;

4) the scope of state compensation for sickness insurance services;

5) fees charged by providers of health care services for the use of their services;

6) legislation changing health care administration.

(2) Agreement shall not be reached on the right to increase the insurance premium unilaterally or to change the scope of insurance cover unilaterally solely on the grounds that the insured person is ageing or his or her state of health is deteriorating. The parties may, however, agree that, when the insured person attains a certain age, the initial insurance premium will be increased to an amount which, according to the relevant insurance premium rate, is payable with regard to an insured person who enters into an insurance contract at that age.

(3) Any declaration by the insurer which retroactively increases the insurance premium or changes the scope of insurance cover is void.

(4) An increase in the insurance premium and a change in the scope of insurance cover shall not take effect earlier than one month after the policyholder is notified of the increase or change.

§ 561. Policyholder's right to cancel

(1) The policyholder may cancel a sickness insurance contract by giving at least three months' notice of the cancellation so that the contract terminates at the end of the year. The policyholder may cancel a sickness insurance contract which is entered into for a term of less than one year by giving at least three days' notice of the cancellation.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(2) If the insurer increases the insurance premium or reduces its obligations, the policyholder may cancel the contract within one month as of receiving notice of the change. In such case, the contract terminates on the effective date of the increase of the insurance premium or reduction of obligations.

§ 562. Restriction of ordinary cancellation by insurer

Ordinary cancellation of a contract of hospital insurance or medical expenses insurance by the insurer is only permitted within the first three years after entry into the contract and by giving at least three months' notice of the cancellation.

§ 563. Restriction on withdrawal from contract

If more than three years have passed since a sickness insurance contract was entered into, the insurer shall not withdraw from the contract on the grounds that the policyholder has violated the notification obligation upon entry into the contract.

§ 564. Release of insurer from performance obligation

(1) The insurer shall be released from its performance obligation if the policyholder or the insured person intentionally caused his or her illness or an accident.

(2) If the policyholder intentionally caused the illness or accident of the insured person, the insurer's performance obligation with respect to the insured person shall remain in force. Upon performance of the obligation, the claim of the insured person for compensation of damage against the policyholder shall transfer to the insurer.

§ 565. Insurer's obligation to provide information

The insurer shall, at the request of an insured person, grant access to the information concerning the state of health of the insured person obtained by the insurer upon entry into the insurance contract or during the period of validity of the insurance contract.

§ 566. Death or dissolution of policyholder

(1) If an insurance contract terminates with the death of the policyholder or the dissolution of a policyholder who is a legal person, the insured person has the right to extend the insurance contract within two months after the death or dissolution of the policyholder if the insured person gives notice of the name of the new policyholder.

(2) The provisions of subsection (1) of this section apply accordingly if the policyholder cancels the insurance contract. The cancellation shall only be valid if the policyholder proves that the insured person is aware of the declaration of cancellation.

§ 567. Group sickness insurance

(1) If a person is excluded from the circle of persons who are insured with group insurance, including on the grounds of the person's retirement or the termination of a contract entered into between the policyholder and the insurer, the person who was insured under the group insurance may submit an application to the insurer to continue insurance of the same class separately for the person pursuant to insurance premium rates applicable to individual

insurance without any waiting periods or additional charges besides the insurance premium being applied.

(2) The right of the insured person provided for in subsection (1) of this section shall expire if the person does not submit an application specified in subsection (1) of this section within one month as of being excluded from the circle of insured persons or termination of the group sickness insurance and performance of the notification obligation by the insurer.

(3) Upon the submission of an application specified in subsection (1) of this section, the insurance premium shall be determined based on the age of the person when the person entered into the group sickness insurance contract.

(4) The insured person shall not have the right provided for in subsection (1) of this section if the person is excluded from the circle of insured persons because of the extraordinary cancellation of the insurance contract by the insurer on the grounds of a violation of the insurance contract by the insured person.

(5) The insurer shall inform each person who is insured with a group insurance upon entry into the group sickness insurance contract or at the time the insurance cover extends to such person of the conditions under which the insurance is terminated and of the consequences regarding the size of the insurance premium if separate insurance were to be continued.

(6) Ordinary cancellation of a group sickness insurance contract by the insurer is only permitted if the insured persons may continue the insurance relationship in the form of individual insurance.

Part 5

Support Contracts

Chapter 28

Life Annuity

§ 568. Definition of life annuity contract

(1) In a life annuity contract, one person (the grantor of a life annuity) undertakes to pay, on a periodic basis, a specific sum of money or deliver other objects which are limited by specific characteristics (life annuity) to the other party or a third party (life annuitant) during the lifetime of the grantor, annuitant or other person. The payment of a life annuity is presumed to be without charge.

(2) The provisions of this Chapter apply to life annuities established by law or a court

judgment unless otherwise provided by law or the court judgment.

§ 569. Term

(1) A life annuity contract is presumed to have been entered into for the duration of the lifetime of the annuitant.

(2) A life annuity established for the duration of the lifetime of the grantor of the life annuity or a third party shall transfer to the successors of the annuitant in the case of death of the annuitant.

§ 570. Form

Life annuity contracts shall be entered into in writing.

§ 571. Payment of annuity

(1) Monetary life annuities shall be paid three months in advance. Life annuities in a form other than in money shall be paid a reasonable period in advance if such advance payment may be reasonably presumed on the basis of the nature of the life annuity.

(2) If a person for the duration of whose life a life annuity is established dies before the expiry of the period for which the life annuity has been paid in advance, the life annuity which has already been paid cannot be reclaimed.

(3) If in the case specified in subsection (2) of this section the life annuity has not yet been paid, the life annuity for the period shall be paid to the successors of the life annuitant.

Chapter 29

Maintenance Contract

§ 572. Definition of maintenance contract

(1) In a maintenance contract, one person (dependant) undertakes to deliver assets or specific objects into the ownership or possession of another person (maintenance provider), and the maintenance provider undertakes to maintain the dependant and provide him or her with care during the lifetime of the dependant or another period as agreed.

(2) The provisions concerning succession contracts apply to a maintenance contract if

assets or other objects are to be delivered after the death of the dependant.

§ 573. Form of maintenance contract

Maintenance contracts shall be notarised.

§ 574. Obligations of maintenance provider

A maintenance provider shall maintain the dependant and provide him or her with care in a manner which it is reasonable for the dependant to expect on the basis of the value of that which is delivered by him or her and on the basis of his or her existing way of life. The maintenance provider shall ensure that the dependant has reasonable housing and provide him or her with the necessary care and health services if he or she is or falls ill.

§ 575. Withdrawal from contract

A dependant may withdraw from a maintenance contract on the same bases and pursuant to the same procedure as a donor from a gratuitous contract.

§ 576. Death of maintenance provider

A maintenance contract is not presumed to terminate with the death of the maintenance provider.

§ 577. Restriction on waiver of claim

A claim for maintenance of a dependant arising from a maintenance contract is not subject to waiver or claim for payment.

Part 6

Compromise Contract

§ 578. Definition of compromise contract

(1) A compromise contract is a contract which is entered into in order to render a con-

testable or ambiguous legal relationship incontestable by way of mutual concession. Amongst other things, uncertainty as to whether a claim can be enforced is also deemed to be ambiguity.

(2) It is presumed that the parties will waive their claims as a result of the compromise contract and acquire new rights on the basis of the compromise contract.

§ 579. Validity of rights of third parties

A compromise contract does not affect the rights of third parties which arise from contestable or ambiguous legal relationships.

Part 7

Contract of Partnership

Chapter 30

General Provisions

§ 580. Definition of contract of partnership

(1) In a contract of partnership, two or more persons (partners) undertake to act to achieve a mutual objective and to help to achieve the objective in the manner established by the contract, above all by making contributions.

(2) Partners are required to protect the partnership from loss and to consider the interests of the other partners.

§ 581. Contributions

(1) The contribution made by a partner may be any manner of promotion of a mutual objective, including the transfer of assets to the partnership, grant of the use of assets to the partnership or provision of services to the partnership.

(2) The contributions of all partners are presumed to be equal.

(3) When contributions are made, the provisions relating to lease contracts apply to the transfer of risk of accidental loss of or damage to objects and to liability for any defects of objects if a partner grants the use of an object to the partnership, and the provisions relating

to contracts of sale apply thereto if a partner transfers an object to the partnership.

(4) A partner is not required to increase an already agreed upon contribution or to make additional contributions.

Chapter 31

Relations between Partners

§ 582. Management of partnership

(1) Each partner has the right and the obligation to participate in the management of the partnership.

(2) The partners shall manage the partnership jointly and the consent of all partners is needed for any transaction to be concluded.

§ 583. Management by one or several partners

(1) The right to manage a partnership may be granted by the contract of partnership to one or several partners. In this case, the other partners shall not participate in the management of the partnership. If the right to manage is granted to several partners, they shall manage the partnership jointly and the consent of all authorised partners is needed for any transaction to be concluded.

(2) A partner who holds a management right granted to him or her by the contract of partnership may be deprived of the right with good reason by a unanimous resolution of the other partners unless the contract of partnership prescribes that any such resolution of the partners be taken by a majority of votes. The primary good reason shall be a material violation of an obligation by a partner or his or her inability to manage the partnership.

(3) A partner may relinquish his or her right to manage if he or she has good reason therefor. If a partner relinquishes his or her right to manage at a time when the partnership cannot be managed in any other manner, he or she shall compensate any damage incurred by the other partners for this reason except in the case where, taking into consideration the interests of the partner and the partnership, the partner cannot have been expected to continue managing the partnership.

(4) The provisions concerning authorisation agreements apply to the rights of partners authorised to manage the partnership and to their obligations before other partners, unless otherwise provided by this Part.

§ 584. Right to contest

A partner authorised to manage the partnership shall not perform an act if another partner authorised to manage the partnership contests it.

§ 585. Personal execution of management right

It is presumed that a partner authorised to manage the partnership shall not delegate his or her managerial duties to other persons. A partner authorised to manage may use the assistance of other persons when performing his or her managerial duties.

§ 586. Reporting and provision of information

(1) Upon the dissolution of a partnership, the partner authorised to manage the partnership is required to give a report on his or her activities to the other partners. This shall also be done during the term of the contract of partnership if the objective of the partnership or the managerial duties dictate such reporting.

(2) The partner authorised to manage the partnership shall inform the other partners of any significant circumstances concerning the partnership and, if they so request, provide them with information with respect to the transactions of the partnership.

(3) A partner has the right to examine all documents relating to the partnership.

(4) Agreements which derogate from the provisions of subsection (2)-(3) of this section are void.

§ 587. Resolutions

(1) A resolution of the partners is required in order to conclude any transaction beyond the scope of the everyday activities of the partnership. It is presumed that the consent of all partners is required to pass a resolution.

(2) If the contract of partnership prescribes that any resolution be passed by a majority of votes, it shall be presumed that the majority is calculated on the basis of the number of partners.

§ 588. Non-transferability of rights of partners

Claims of partners which are created against one another on the basis of a contract of partnership are not subject to waiver, except for claims for compensation of costs arising from the management of the partnership and claims on profits or on assets acquired by liquida-

tion.

§ 589. Partnership property

(1) Contributions made by partners and assets acquired for the partnership shall be transferred to the joint property of the partnership (partnership property).

(2) Assets which are acquired on the basis of a right included in the partnership property or as compensation for the destruction of, damage to or seizure of objects included in the partnership property are also included in the partnership property.

(3) If an obligor of a partnership performs an obligation to a partner and, while doing so, does not or need not know that the claim from which the obligation to be performed by the obligor arises is actually included in the partnership property, the partners shall not jointly claim performance of such obligation subsequently. In such case, the provisions provided in §§ 169 and 171 of this Act concerning waiver of claims apply correspondingly.

§ 590. Integrity of partnership property

(1) Partners shall not dispose of objects which are included in the partnership property or demand the division of the partnership property.

(2) An obligor of a partnership shall not set off a claim which is included in the partnership property with a claim against a partner.

§ 591. Submission of reports and distribution of profits

Upon the dissolution of a partnership, the partners authorised to manage the partnership shall prepare a management report, submit it to the partners and make a proposal for the profits to be distributed or losses covered. If a partnership is founded for a period longer than one year, it shall be presumed that a report is to be prepared and profits distributed after the end of each financial year.

§ 592. Shares in distribution of profits and covering of losses

(1) If the shares of partners in the distribution of profits and covering of losses have not been determined, the share attributable to each partner shall be calculated in proportion to the size of the partner's contribution.

(2) If the shares of partners have been determined only in the distribution of profits or in the covering of losses, it shall be presumed that such determination is valid for both profits and losses.

Chapter 32

Relations of Partners with Third Parties

§ 593. Representation

If, on the basis of the contract of partnership, a partner is authorised to manage the partnership, it shall be presumed that the partner is also authorised to represent other partners in relations with third parties.

§ 594. Withdrawal of right of representation

(1) A partner who holds a right of representation granted to him or her by the contract of partnership may be deprived of such right with good reason by a unanimous resolution of the other partners unless the contract of partnership prescribes that any resolution be taken by a majority of votes. The primary good reason shall be a material violation of an obligation by a partner or his or her inability to represent the partners.

(2) If a partner is authorised to manage the partnership and represent other partners by the contract of partnership, he or she may be deprived of the right of representation only together with the withdrawal of his or her management right.

§ 595. Liability of partners

It shall be presumed that all partners are solidarily liable to third parties for obligations assumed by the partnership.

Chapter 33

Dissolution of Partnership and Departure or Exclusion of Partners

§ 596. Bases for dissolution of partnership

(1) A partnership is dissolved:

1) by a resolution of the partners;

2) by cancellation of the contract of partnership by a partner;

3) by cancellation of the contract of partnership by an obligee of a partner in the case specified in § 599 of this Act;

4) by the death of a partner;

5) if the objective of the partnership is achieved or if it becomes clear that it is impossible to achieve the objective;

6) upon the expiry of the term of the partnership if the partnership is founded for a specified term;

7) if a partner is declared bankrupt.

(2) The dissolution of a partnership does not terminate or alter the obligations of the partners to third parties.

§ 597. Cancellation by partner

(1) A partner has the right, at any time, to cancel a contract of partnership entered into for an unspecified term. A contract of partnership which is entered into for a specified term may be cancelled only with good reason. The primary good reason shall be a material violation of an obligation by another partner.

(2) Even if a term for cancellation has been determined in the contract of partnership, the partnership may be cancelled without adhering to the term for cancellation for the good reason specified in subsection (1) of this section.

(3) A contract of partnership entered into for the duration of the lifetime of a partner may be cancelled in the same manner as a contract of partnership entered into for an unspecified term. This also applies if partners continue the activities of a partnership entered into for a specified term after the expiry of the term.

(4) A contract of partnership shall not be cancelled at a time when the dissolution of the partnership would unreasonably damage the lawful interests of the other partners. If a partner cancels a contract of partnership at such time without good reason, the cancelling party is required to compensate any damage incurred by the other partners for this reason.

(5) Any agreements which preclude the right of a partner to cancel a contract of partnership with good reason or which limit such right, contrary to the provisions of subsections (1)-(4) of this section, are void.

§ 598. Obligation to inform of death or bankruptcy of partners

The successors of a partner shall immediately inform the other partners of the death of the partner even if the death of the partner does not constitute a basis for the dissolution of the partnership according the contract of partnership. A trustee in bankruptcy has the same ob-

ligation upon the declaration of a partner as bankrupt.

§ 599. Cancellation by obligee of partner

(1) If, in order to satisfy a claim made by an obligee of a partner, execution proceedings have been conducted against the assets of a partner but the claim made by the obligee has not been satisfied, the obligee has the right to cancel the contract of partnership on behalf of the partner without adhering to the term for cancellation.

(2) Rights of a partner arising from the contract of partnership shall not be subject to a claim for payment made by an obligee of the partner during the term of the contract of partnership, except for the rights to a share of the profits.

§ 600. Liquidation of partnership

(1) Upon the dissolution of a partnership, the partnership shall be liquidated and the partnership property shall be distributed between the partners. The provisions concerning distribution of common ownership apply to liquidation unless otherwise provided by this Chapter.

(2) Upon liquidation, partnership property shall be sold in so far as this is necessary to perform the obligations of the partnership and to return contributions.

§ 601. Specifications of management right upon liquidation of partnership

(1) Partners shall perform acts relating to liquidation jointly even if the management right was previously granted only to some of the partners. If the management right is granted to some of the partners by the contract of partnership, these partners may perform acts of management until such time as they become aware or should become aware of the dissolution of the partnership.

(2) If, due to the joint management right arising from the dissolution of a partnership, the interests of the partnership are endangered as a result of the belated consent of all partners for the performance of a transaction, each partner has the right and obligation to continue performing the management obligations granted to him or her by the contract of partnership until such time as the partners are able to organise the performance of the act in another manner. The successors of a partner have the same obligation upon the death of the partner.

§ 602. Performance of obligations

(1) The obligations of a partnership for which the partners are solidarily liable shall be

the first to be performed out of the partnership property, including the obligations which are divided between the partners with respect to obligees and the obligations with respect to a partner for which the other partners are liable as obligors. If an obligation has not fallen due or is contestable, the amount necessary for the performance of such obligation shall be deposited.

(2) If the partnership property is insufficient to perform the solidary obligations, the partners shall be liable for the amount missing in proportion to their share in the covering of losses. If the amount to be borne by a partner cannot be obtained from the partner, the other partners shall cover the deficit in proportion to their share in the covering of losses, and the claim against the partner who failed to perform the obligation shall pass to them.

§ 603. Return of contributions

(1) After the obligations are performed, contributions made by the partners shall be returned from the remaining partnership property.

(2) If the value of a contribution has decreased, the corresponding partner shall be compensated for the decrease in value.

(3) If the return of a contribution is not possible, compensation shall be paid for the value of the contribution at the time it was made. Compensation shall not be paid for a contribution which consisted of the provision of services to the partnership or the delivery of objects for the partnership to use.

(4) If the partnership property is insufficient to return the contributions, the provisions of subsection 602 (2) of this Act apply.

§ 604. Distribution of residue

Assets remaining after the performance of solidary obligations and the return of contributions belong to the partners in proportion to their share in the distribution of profits.

§ 605. Continuation of partnership

If the partnership contract prescribes that, upon the cancellation of the contract by a partner, the death of a partner or the declaration of a partner as bankrupt, the partnership is to be continued by the remaining partners, the partner is deemed to have departed from the partnership if any of these events occur.

§ 606. Exclusion of partner

If cancellation of the contract of partnership is based on violation of an obligation by a partner, the partner who violates the obligation may be excluded from the partnership by a joint resolution of the other partners. Exclusion shall be effected by making a petition concerning the partner to be excluded.

§ 607. Payment of compensation to departed or excluded partner

If a partner departs or is excluded from a partnership, the other partners shall return or pay compensation for the contribution made by the departed or excluded partner to the partner pursuant to the provisions of § 603 of this Act to the extent that the partner would have received upon the liquidation of the partnership if the partnership had been dissolved at the time of his or her departure or exclusion.

§ 608. Liability of departed or excluded partner

(1) A partner who has departed or been excluded from the partnership shall be solidarily liable with the other partners for any obligation of the partnership with respect to obligees which arose before the departure or exclusion of the partner from the partnership if the obligation has fallen due or will fall due within five years after the departure or exclusion of the partner from the partnership.

(2) If an obligee of a partnership demands the performance of an obligation specified in subsection (1) of this section from a partner who has departed or been excluded from the partnership, the other partners shall be liable for the performance of the obligation of the partnership with respect to the partner who has departed or been excluded from the partnership. If such obligation has not yet fallen due, the other partners shall provide the partner who has departed or been excluded from the partnership with security at the partner's request.

(3) If the partnership property is insufficient to perform the joint obligations and cover the contributions, the partners who have departed or been excluded from the partnership shall be liable to the other partners for the amount missing in proportion to their share in the covering of losses.

§ 609. Completion of transactions

(1) A partner who has departed or been excluded from a partnership shall participate in the distribution of profits and the covering of losses of the partnership arising from the transactions which were not completed by the time of his or her departure or exclusion. The other partners have the right to complete such transactions in the manner which they consider to be the most profitable.

(2) With regard to transactions specified in subsection (1) of this section, a departed or excluded partner may, at the end of each financial year, demand that the partnership submit a report concerning transactions which have been completed in the meantime, pay the

amount belonging to the partner and communicate information concerning the status of transactions not yet completed.

Chapter 34

Contract of Silent Partnership

§ 610. Definition of contract of silent partnership

(1) In a contract of silent partnership, the silent partner undertakes to make a specific contribution to the management of the enterprise or a part thereof and the undertaking undertakes to pay the silent partner a share of the profits corresponding to the silent partner's contribution.

(2) It shall be presumed that the assets delivered by a silent partner are transferred to the property of the undertaking.

(3) Rights and obligations which arise from transactions concluded in the process of managing of an enterprise are created only with respect to the undertaking. The undertaking shall manage the enterprise diligently and act in good faith with respect to the silent partner.

(4) The provisions concerning contracts of partnership apply to contracts of silent partnership unless the provisions of this Chapter provide otherwise.

§ 611. Transfer of rights and obligations arising from contract of silent partnership

The rights and obligations of a silent partner arising from a contract of silent partnership may only be transferred with the consent of the undertaking. Consent thereto may be granted in advance in the contract of silent partnership.

§ 612. Withdrawal of management right from silent partner

If a silent partner has been granted the right in a contract to participate in the management of the enterprise, the undertaking may deprive the silent partner of such right only in the cases prescribed by the contract, in the case of a material violation of an obligation by the silent partner, or in the case of the inability of the silent partner to manage the company.

§ 613. Silent partner's inspection right

A silent partner has the right to inspect the accounting records of an undertaking which con-

cern the economic activities in which the silent partner participates, and to receive a copy of the annual report of the undertaking.

§ 614. Distribution of profits and covering of losses

(1) It shall be presumed that the profits of an enterprise are distributed and the losses covered corresponding to the relationship between the value of the enterprise and the contribution of the silent partner at the time of entry into the contract of silent partnership.

(2) Any agreement which precludes the participation of a silent partner in the distribution of profits is void.

(3) If, pursuant to the contract of silent partnership, a silent partner participates in the management of the enterprise, the silent partner has the right to receive a reasonable share of the profits for such activity. The remaining profits shall be distributed pursuant to the provisions of subsection (1) of this section.

§ 615. Calculation of profits and losses

(1) An undertaking shall calculate profits and losses within two months after approval of the annual report and pay the share attributable to the silent partner thereto.

(2) A silent partner is not required to return a share of the profits which has already been paid thereto after subsequent losses.

(3) If a silent partner has not paid the contribution in full or the contribution has decreased due to losses, any profits created shall be used primarily to cover the contribution of the silent partner.

(4) It shall be presumed that the share of the profits which is not paid to a silent partner does not increase the contribution of the silent partner.

§ 616. Death of silent partner

If a silent partner dies, the successor of the silent partner shall become the party to the contract of silent partnership. The contract of silent partnership may be cancelled by either the undertaking or the successor within three months after the death of the silent partner and the cancellation is effective as of the end of the financial year.

§ 617. Termination of contract of silent partnership

(1) Upon the termination of a contract of silent partnership, the undertaking shall return

the contribution of the silent partner, either increased by profits or reduced as a result of losses, within two months after the dissolution of the partnership.

(2) A silent partner shall also participate in the distribution of profits and the covering of losses which arise from any transactions not completed by the time of the termination of the silent partnership.

§ 618. Bankruptcy of undertaking

(1) A contract of silent partnership terminates upon the declaration of the undertaking as bankrupt, and the silent partner may, on the basis of the silent partner's contribution, file a claim against the undertaking as a creditor in bankruptcy proceedings to the extent which the contribution of the silent partner exceeds the share of the silent partner in the covering of losses.

(2) If a silent partner has not paid the contribution, the silent partner shall transfer the missing share to the bankruptcy estate in the extent which is necessary to cover the silent partner's share in the covering of losses.

Part 8

Contracts for Provision of Services

Chapter 35

Authorisation Agreement

§ 619. Definition of authorisation agreement

By an authorisation agreement, one person (the mandatary) undertakes to provide services to another person (the mandator) pursuant to an agreement (to perform the mandate) and the mandator undertakes to pay remuneration to the mandatary therefor if so agreed.

§ 620. Diligence of mandatary upon performance of mandate

(1) Upon the performance of a mandate, the mandatary shall act in a loyal manner with respect to the mandator and exercise the necessary level of diligence commensurate with the nature of the mandate.

(2) A mandatary shall perform the mandate to the maximum benefit of the mandator in

the light of and according to the mandatary's knowledge and abilities and shall prevent any damage to the property of the mandator. In addition, a mandatary who is acting for the purposes of the mandatary's economic or professional activities shall apply the generally recognised skills of the mandatary's profession.

§ 621. Instructions of mandator

(1) A mandatary shall adhere to the instructions provided by the mandator upon performance of the mandate. A mandator shall not provide specific instructions concerning the manner or conditions of performance of the mandate in the case where the mandatary is expected to perform the mandate based on the mandatary's professional skills or abilities.

(2) If a mandatary wishes to deviate from the instructions of the mandator, the mandatary shall inform the mandator thereof and wait for the decision of the mandator, except in the case where a delay would be likely to cause unfavourable consequences for the mandator and if it may be presumed under the circumstances that the mandator will approve of the deviation.

(3) In the case where adherence to the instructions of a mandator would be likely to cause unfavourable consequences for the mandator, the mandatary shall comply with the instructions only after the mandatary has called the mandator's attention to such consequences and if the mandator fails to modify the instructions.

(4) A mandatary shall not be liable for violation of the obligations provided for in subsections (1)-(3) of this section if the mandator later approves of the action of the mandatary.

§ 622. Performance of mandate in person

It is presumed that a mandatary shall perform the mandate in person. A mandatary also has the right to use the assistance of third parties in performing the mandate.

§ 623. Conflict of interests

(1) In the case where the object of a mandate is entry into a transaction, the mandatary may concurrently be the other party to the transaction to be entered into for performance of the mandate or the mandatary of the other party to the transaction only if the possibility of a conflict of interests is precluded.

(2) In the case of a mandate specified in subsection (1) of this section, the mandatary shall inform the mandator of the mandatary's direct or indirect interest with regard to the transaction which is the object of the mandate.

(3) A transaction entered into by the mandatary with the mandatary upon the performance of a mandate does not restrict the right of the mandatary to receive remuneration and

to the reimbursement of expenses if the provisions of subsection (1) of this section have been adhered to.

(4) The provisions of subsections (1)–(3) of this section do not preclude or restrict the validity of the right of representation of a mandatary.

§ 624. Notification obligation of mandatary

(1) The mandatary shall inform the mandator of all relevant facts relating to performance of the mandate, above all of facts which may cause the mandator to modify the mandator's instructions, and, at the request of the mandator, shall provide the mandator with information on performance of the mandate.

(2) Upon performance of a mandate, the mandatary shall provide the mandator with an overview of the expenditure and revenue relating to performance of the mandate together with the documentation which is the basis for the overview.

(3) Any agreement to derogate from the provisions of subsections (1) or (2) of this section to the detriment of the mandator shall be entered into in writing.

§ 625. Duty to maintain confidentiality

(1) During the performance of a mandate, the mandatary shall maintain the confidentiality of facts which become known thereto in connection with the mandate and which the mandator has a legitimate interest in keeping confidential, above all by maintaining the mandator's production and business secrets. A mandatary is not required to maintain confidentiality if the mandator has granted the mandatary permission to disclose facts or if the mandatary's duty to disclose arises from law.

(2) A mandatary's duty specified in subsection (1) of this section shall continue after the expiry of the authorisation agreement to the extent needed to protect the legitimate interests of the mandator.

§ 626. Duty to hand over

(1) A mandatary shall hand over anything received or created in connection with performance of the mandate to the mandator, along with anything which the mandatary received and did not use to perform the mandate.

(2) If a mandatary uses money in the mandatary's own interests despite being required to use the money in the interests of the mandator or to hand over the money to the mandator, the mandatary shall pay interest in an amount provided by law for the time during which the mandatary used the money.

(3) Claims and movables which a mandatary acquires when performing a mandate in the mandatary's name but on account of the mandator, and claims and movables which the mandator transfers to the mandatary for performance of the mandate are not included in the bankruptcy estate of the mandatary and they cannot be subject to a claim against the mandatary in an enforcement procedure.

§ 627. Remuneration of mandatary

(1) In the case where the amount of remuneration payable has not been agreed upon in the authorisation agreement, remuneration shall be paid if it can be reasonably presumed that the mandate would only be performed for remuneration, above all if the mandatary performed the mandate for the purposes of the mandatary's economic or professional activities.

(2) If the amount of remuneration has not been specified, remuneration which is reasonable under the circumstances shall be paid.

§ 628. Procedure for payment of remuneration to mandatary and for reimbursement of expenses and compensation of damages

(1) If the remuneration payable to a mandatary is determined on the basis of certain periods of time, the remuneration shall be paid after each corresponding period. In the case of a mandate where the object is entry into a transaction, it is presumed that remuneration is payable after performance of the mandate.

(2) A mandator shall reimburse the mandatary for any reasonable expenses which the mandatary has incurred in performing the mandate and which the mandatary could have deemed to be necessary in the circumstances, except in the case where the expenses are to be covered from the remuneration of the mandatary. It is presumed that the expenses arising from the performance of a mandate which are usually incurred by the mandatary and the expenses which the mandatary would have incurred even without entering into an authorisation agreement shall be covered from the remuneration of the mandatary.

(3) The mandator shall release the mandatary from obligations to third parties which the mandatary has assumed for performance of the mandate.

(4) Before commencing performance of a mandate, the mandatary has the right to demand that an advance payment be made by the mandator in a reasonable amount for the remuneration payable and expenses to be reimbursed.

(5) A mandator shall compensate for damage which is caused to the mandatary upon performance of a mandate and which arises from the risks usually involved in the performance of such a mandate or from the instructions of the mandator, except in the case where damage is to be covered from the remuneration of the mandatary or if the damage was caused by the mandatary behaving in a manner which, under the circumstances, could not be deemed to be necessary for performance of the mandate.

(6) It is presumed that remuneration paid to a mandatary covers the damage specified

in subsection (5) of this section.

§ 629. Payment of remuneration in event of expiry of authorisation agreement

(1) If the mandatary is to be remunerated after performance of the mandate or expiry of the term granted for performance of the mandate and if the authorisation agreement expires before the mandate is performed or before the expiry of the term granted for the performance thereof, the mandatary is entitled to receive a reasonable part of the remuneration. In such case, the mandatary is entitled to receive full remuneration only if the agreement was terminated due to circumstances dependent on the mandator and if the payment of remuneration is justified under the circumstances.

(2) Upon determination of the amount of remuneration in the case specified in subsection (1) of this section, anything which has already been performed by the mandatary, the gains created thereby to the mandator and the reason for termination of the agreement shall taken into consideration among other circumstances. Any amounts which the mandatary would have saved as a result of the termination of the agreement or which the mandatary would have obtained in any other manner or could reasonably have been expected to obtain shall be deducted from the remuneration.

(3) If the mandatary cancels the authorisation agreement before the performance thereof, the mandatary has the right to demand that remuneration be paid to the extent which corresponds to the services already provided and that expenses not covered by the remuneration be reimbursed in so far as the mandator has an interest in the services provided up to that point.

§ 630. Ordinary cancellation of authorisation agreement entered into for unspecified term

(1) Both parties have the right to cancel an authorisation agreement entered into for an unspecified term at any time until the mandate is performed.

(2) However, a mandatary has the right to cancel an authorisation agreement entered into for an unspecified term only on condition that the mandator can receive the service or enter into the transaction which is the object of the mandate in another manner. If the mandatary cancels the authorisation agreement without considering the above, the mandatary shall compensate the mandator for any damage caused thereby.

(3) If an authorisation agreement is entered into for the life of one party or for a period longer than five years, the mandatary has the right to cancel the contract once five years have passed from the date of entry into the contract by giving at least six months' advance notice.

§ 631. Extraordinary cancellation of authorisation agreement

Both parties have the right to cancel both an authorisation agreement entered into for a specified term and an authorisation agreement entered into for unspecified term without observing the provisions of § 630 of this Act if it becomes evident that, bearing in mind all the circumstances and the interests of both parties, the party wishing to cancel the agreement cannot be expected to continue performance of the authorisation agreement until expiry of the term for cancellation or the term of the agreement or until the mandate is performed.

§ 632. Death or bankruptcy of mandator

(1) It is presumed that an authorisation agreement does not expire upon the death of the mandator.

(2) In the event of the bankruptcy of the mandator, the authorisation agreement shall expire upon the declaration of bankruptcy, except in the case where there is no connection between the authorisation agreement and the bankruptcy estate.

(3) If an authorisation agreement expires upon the death of the mandator or upon the declaration of the mandator as bankrupt, the authorisation agreement is nevertheless deemed to be in force until such time as the mandatary becomes aware or ought to become aware of the death of the mandator or of the declaration of the mandator as bankrupt.

§ 633. Death or bankruptcy of mandatary

(1) It is presumed that an authorisation agreement expires upon the death of the mandatary.

(2) In the event of the bankruptcy of the mandatary, the authorisation agreement shall expire upon the declaration of bankruptcy, except in the case where there is no connection between the authorisation agreement and the bankruptcy estate.

§ 634. Notification obligation of successors

In the event of the death of a party to an authorisation agreement, the successors of the party shall immediately inform the other party thereof.

Chapter 36

Contract for Services

§ 635. Definition of contract for services

(1) By a contract for services, one person (the contractor) undertakes to manufacture or modify a thing or to achieve any other agreed result by providing a service (work), and the other person (the customer) undertakes to pay remuneration therefor.

(2) The provisions of §§ 620-626, subsections 628 (2) and (3), § 629 and §§ 631-634 of this Act apply to a contract for services where the object of the contract is entry into a transaction.

(3) It is presumed that a contractor is not required to perform the obligations arising from the contract in person.

(4) A consumer contract for services is a contract for services entered into by a contractor acting for the purposes of the contractor's economic or professional activities and a customer who is a consumer where the object of the contract is the provision of a service with regard to a movable of the consumer or the manufacture or production of a movable for the consumer.

§ 636. Obligation to deliver

(1) A thing produced as work shall be delivered to the customer by the contractor. If the thing is manufactured from material provided by the contractor, the contractor shall enable the ownership of the thing to be transferred to the customer.

(2) If a thing to be manufactured is a fungible thing, the provisions concerning sale apply to the obligation to deliver.

(3) If, upon the manufacture of a thing, it is agreed that the ownership of the thing will remain with the contractor until the remuneration is paid, the provisions of § 233 of this Act apply.

(4) Failure of a contractor to deliver a thing to the customer in due time under a consumer contract for services is deemed to be a fundamental breach of the contract.

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§ 637. Duty to pay remuneration

(1) If remuneration or the amount thereof has not been agreed in a contract for services, the standard remuneration or, if there is no standard remuneration, reasonable remuneration under the circumstances is payable.

(2) It is presumed that a contractor shall not demand remuneration for preparation of the budget for the work.

(3) The claim of a contractor for payment falls due after the completion of the work.

(4) If acceptance of work by a customer has been agreed upon or is usual, the claim of the contractor for payment falls due after the work has been accepted or is deemed to have been accepted. If work is to be delivered in parts and the price has also been calculated in parts, each part shall be paid for after the acceptance of the corresponding part of the work.

(5) A customer is not required to pay for work before having the opportunity to examine the thing, unless the agreed manner of delivery or the terms and conditions of payment do not grant the customer such opportunity.

(6) Any agreement under a consumer contract for services pursuant to which a consumer undertakes to make an advance payment to the contractor in an amount which exceeds one half of the total remuneration payable to the contractor is void.

§ 638. Duty to accept work

A customer is required to accept completed work if the delivery of the work had been agreed upon or is usual due to the nature of the work. Work is also deemed to have been accepted if the customer fails, without legal basis, to accept the completed work during a reasonable term granted by the contractor to the customer therefor.

§ 639. Budget overdraft

(1) A budget for the work, which may be binding on the contractor or not, may be agreed in the contract of services. It is presumed that the budget is binding unless agreed otherwise.

(2) In the event of a significant overdraft of a budget which is not binding budget, the contractor may demand that remuneration be paid in the amount exceeding the amount prescribed in the budget unless the overdraft was foreseeable. In such case, the contractor shall immediately notify the customer of the significant overdraft. In the case of failure to notify, the contractor has the right to demand that the amount exceeding that prescribed in the budget be paid only to the extent to which the customer was unjustifiably enriched as a result of the overdraft.

(3) If the customer cancels the contract due to a budget overdraft, the customer is not required to pay remuneration in the amount exceeding the amount prescribed in the budget.

§ 640. Transfer of risk of accidental loss or damage

(1) The customer shall pay the contractor for work performed also in the case where the work was accidentally destroyed or damaged after the risk of accidental loss of or damage to the thing had passed to the customer.

(2) A contractor shall bear the risk of accidental loss or damage until the completion of

the work. If acceptance of the work by a customer has been agreed upon or if this is usual, the contractor shall bear the risk of accidental loss or damage until the work has been accepted or is deemed to have been accepted.

§ 641. Conformity of work

(1) Work shall conform to the contract. Documents accompanying work shall also conform to the contract.

(2) Work does not conform to the contract if, among other things:

1) the work does not have the agreed qualities;

2) in the absence of an agreement concerning the qualities of the work, the work is not fit for the specific purpose for which the customer needs it and of which the contractor was aware or ought to have been aware at the time of entry into the contract if the customer could reasonably have expected to be able to rely on the professional skills or expertise of the contractor, and in other cases for the purpose for which work of the same description would ordinarily be used;

3) the use of the work is hindered by provisions of legislation of which the contractor was aware or ought to have been aware at the time of entry into the contract;

4) third parties have claims or other rights which they may submit with respect to the work;

5) under a consumer contract for services, the work is not of the quality which is usual for such type of work and which the customer may reasonably have expected based on the nature of the work and considering the declarations made publicly by the contractor with respect to the particular qualities of the work, in particular in advertising the work or on labels, unless the contractor proves that the declarations had been modified by the time of entry into the contract or that the declarations did not affect entry into the contract.

(3) The contractor is not liable for the non-conformity of work resulting from the instructions provided by the customer, defects in the material supplied by the customer or preliminary work performed by third parties if the contractor had sufficiently checked the instructions of the customer, the materials or the preliminary work.

(4) The lack of conformity of a thing produced as work resulting from the incorrect installation of the thing is deemed to be equal to a lack of conformity resulting from the work if the installation was carried out by the contractor or under the contractor's responsibility. The same applies if the thing is installed by the customer and the incorrect installation thereof results from insufficient information provided by the contractor with respect to installation of the thing.

§ 642. Liability of contractor in event of lack of conformity of work

(1) The contractor is liable for the lack of conformity of work at the time when the risk of accidental loss or damage passes to the customer even if the lack of conformity only becomes evident later. Under a consumer contract for services, the contractor is liable for the lack of conformity of work at the time of delivery of the work to the consumer even if the passing of the risk of accidental loss or damage was agreed at an earlier date.

(2) Under a consumer contract for services, the contractor is liable for any lack of conformity of work which becomes evident within two years as of the delivery of the work to the consumer. Under a consumer contract for services, it is presumed that any lack of conformity which becomes evident within six months as of the date of delivery of the work to the customer already existed before delivery of the work, unless such presumption is contrary to the nature of the work or lack of conformity.

(3) The contractor is also liable for the lack of conformity of work which occurs after the risk of accidental loss of or damage to the thing passes to the customer if the lack of conformity of the work arises from a violation of the obligations of the contractor.

§ 643. Duty to examine work

If a customer has entered into a contract for services in connection with the customer's professional or economic activities, the customer shall promptly examine the work performed or have the work performed examined.

§ 644. Notification of lack of conformity of work

(1) The customer shall notify the contractor of the lack of conformity of work within a reasonable time after the customer becomes or should have become aware of the lack of conformity. Under a consumer contract for services, the consumer shall notify the contractor of the lack of conformity of work within two months.

(2) A customer who entered into a contract for services in connection with the customer's professional or economic activities shall provide a detailed description of the lack of conformity upon notification thereof.

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(3) The customer shall not rely on the lack of conformity of work if the customer does not notify the contractor of the lack of conformity in due time or, in the case of a contract entered into by a customer in connection with the customer's professional or economic activity, if the customer does not provide a sufficiently detailed description of the lack of conformity. If failure to notify is reasonably excusable, the customer may, by relying on the lack of conformity, still reduce the amount of remuneration payable or claim compensation for damage from the contractor, except for any loss of profit.

§ 645. Specifications for relying on lack of conformity of work

(1) A customer may rely on the lack of conformity regardless of the customer's failure to examine the work or failure to give notification of the lack of conformity in due time if:

1) the lack of conformity is caused due to the intent or the gross negligence of the contractor;

2) the contractor is aware or ought to be aware of the lack of conformity or the circumstances related thereto and does not inform the customer thereof.

(2) Upon failure to perform the obligation to examine work, a customer who is acting in the course of the customer's economic or professional activities may rely on the lack of conformity of a thing, which the customer could have discovered by examining the thing only if the customer proves that the work already lacked conformity at the time when the risk of accidental loss or damage passed to the customer.

(3) A contractor shall not rely on an agreement which precludes or restricts the rights of the customer which are related to the lack of conformity of work if the contractor was aware or ought to have been aware that the work did not conform to the contract and failed to notify the customer thereof.

§ 646. Requirement to perform contract as legal remedy

(1) If work does not conform to the contract, the customer may demand that the work be improved or substitute work be performed by the contractor if this does not cause the contractor to incur unreasonable expenses or suffer unreasonable inconvenience taking into consideration, inter alia, the value of the thing and the significance of the lack of conformity. The contractor may, instead of improving the work, perform substitute work which conforms to the contract.

(2) In the case specified in the first sentence of subsection (1) of this section and provided that the given contract for services is not a customer contract for services, the customer may, in the event of the lack of conformity of work, demand that substitute work be performed only if the lack of conformity of the work constitutes a fundamental breach of the contract.

(3) If the contractor performs work which conforms to the contract to replace non-conforming work, the contractor may demand that the customer return the non-conforming work. In such case, the provisions of §§ 189-191 of this Act apply.

(4) The contractor shall incur the expenses relating to remedying the lack of conformity of work or performance of substitute work, in particular expenses relating to transport, work, travel and materials.

(5) If the customer legitimately demands that the work be improved and the contractor fails to do this within a reasonable period of time, the customer may improve the work or have the work improved and claim reimbursement of any reasonable expenses incurred thereupon from the contractor.

(6) The customer loses the right to demand that the contractor improve the work or perform substitute work if the customer fails to submit a corresponding request to the contractor with the notice concerning the lack of conformity of the work or within a reasonable period of time after submission of the notice, unless the behaviour of the contractor is contrary to the principle of good faith.

(7) The provisions of subsection (6) of this section do not apply to consumer contracts for services.

§ 647. Fundamental breach of contract for services by contractor

(1) A contractor is deemed to be in fundamental breach of a contract for services if, inter alia, the improvement or substitution of work is not possible or fails or if the contractor refuses to improve or substitute the work without good reason or fails to do so within a reasonable period of time after the contractor has been notified of the lack of conformity.

(2) Under a consumer contract for services, the causing of unreasonable inconvenience to a customer by the improvement or substitution of work is also deemed to be a fundamental breach of contract by the contractor.

(3) In the cases specified in subsections (1) and (2) of this section, the customer is not required to grant the contractor an additional term for performance as specified in § 114 of this Act and has the right, inter alia, to withdraw from the contract.

§ 648. Restrictions on reduction of remuneration

The customer shall not reduce remuneration payable to the contractor if:

1) the contractor brings the work into conformity with the contract or performs substitute work;

2) the customer refuses, without legal basis, to accept the contractor's proposal to bring the work into conformity with the contract or to perform substitute work.

§ 649. Specifications for compensation for damage

The customer may also claim compensation from the contractor for damage caused due to the thing produced as work being used for purposes other than those intended, if such use was caused due to the contractor providing insufficient information to the customer, and compensation for damage which is caused to the thing due to its lack of conformity.

§ 650. Contractor's guarantee and duty to inform of servicing

(1) It is presumed that, upon the assumption of a guarantee obligation (contractor's guarantee) by a contractor with respect to work, the guarantee covers all aspects of the lack of conformity of the work which become evident during the term of the guarantee. The provisions of §§ 230 and 231 of this Act apply to contractor's guarantee.

(2) If, under a consumer contract for services, the customer can reasonably presume that services related to the use, maintenance or repair of work performed will be provided but the contractor does not provide these services, the contractor shall, at the time of delivery of the work and also thereafter if so requested by the consumer, provide sufficient information to the customer on the possibilities of using such services.

§ 651. Commencement of limitation period of claims arising from lack of conformity of work

(1) The limitation period of a claim arising from the lack of conformity of work shall commence as of the completion of the work. If the customer is required to accept the work, the limitation period of a claim shall commence as of the acceptance of the work or as of the work being deemed to have been accepted.

(2) Upon the performance of substitute work, the limitation period shall commence as of the completion of the substitute work. Upon remedying a lack of conformity, the limitation period shall recommence with respect to the remedied lack of conformity as of the remedying of the lack of conformity.

§ 652. Delay by customer

(1) If, in order for work to be performed, a customer must perform an act which may among other things consist of the supply of material, provision of instructions or assistance in any other manner in the performance of the work and the customer delays the performance thereof, the contractor has the right to demand compensation for the damage created to the contractor by the delay. The duration of the delay, the amount of remuneration, the savings made by the contractor due to the delay and anything which the contractor obtained or could reasonably have obtained by using the labour force thereof for different purposes shall be taken into account upon determination of the amount of compensation.

(2) If, in order for work to be performed, a customer must perform an act which may among other things consist of the supply of material, provision of instructions or assistance in any other manner in the performance of the work and the customer delays the performance thereof and by doing so fundamentally violates the contract, the contractor has the right to cancel the contract and to demand payment of a part of the remuneration corresponding to the work already performed and reimbursement of expenses not included in the remuneration.

(3) If a delay in acceptance of work is caused by the customer, the contractor has the right to demand payment of the total agreed remuneration from which the amount which the contractor saved in costs by cancelling the contract or obtained or could reasonably have obtained by using the labour force thereof for different purposes is deducted.

§ 653. Destruction or deterioration of work or impossibility of performing work for reasons arising from customer

If, due to a defect in the material supplied by the customer or an order given by the customer for performance of work, the work is destroyed or deteriorates or it becomes impossible to perform the work before its completion or, in the case where work has to be accepted, before its acceptance, the contractor has the right to cancel the contract and demand payment of a part of the remuneration corresponding to the work already performed and reimbursement of expenses not included in the remuneration.

§ 654. Right of security

(1) In order to secure claims arising from a contract for services, the contractor has the right of security over the movables of the customer which the contractor has manufactured, repaired or modified if such movables are in the possession of the contractor for contracting purposes.

(2) In order to secure claims arising from a contract, a contractor who is required to construct, repair or modify a structure or a part thereof has the right to demand the establishment of a mortgage on the immovable on which the structure is situated.

(3) In order to secure claims arising from a contract, a contractor who is required to construct, repair or alter a ship entered in the ship register has the right to demand the establishment of a maritime mortgage on a ship belonging to the customer.

§ 655. Customer's right of cancellation

(1) A customer has the right to cancel a contract for services at any time. If the customer has cancelled the contract for services, the contractor has the right to demand payment of the agreed remuneration from which the savings made by the contractor due to the cancellation of the contract and anything which the contractor obtained or could reasonably have obtained by using the labour force thereof for different purposes are deducted.

(2) The provisions of subsection (1) of this section do not apply if the customer cancels the contract due to violation thereof by the contractor.

§ 656. Prohibition on violation of provisions

Under a consumer contract for services, a person or an agency provided by law has the right, pursuant to the procedure provided by law, to demand that a contractor who is in violation of the provisions concerning contracts for services specified in this Chapter and in the General Part of this Act terminate the violation and refrain from further violation.

§ 657. Mandatory nature of provisions under consumer contracts for services

(1) Under a consumer contract for services, any agreement which derogates from the provisions of this Chapter and the General Part of this Act concerning legal remedies used in the event of a breach of contract to the detriment of the customer are void.

(2) The provisions of this Chapter apply to consumer contracts for services entered into with customers residing in Estonia if the contracts are concluded as a result of public tenders, advertising or other similar economic activities which occur in Estonia, regardless of which state's law is applicable to the contract.

Chapter 37

Brokerage Contract

§ 658. Definition of brokerage contract

(1) By a brokerage contract, one person (the broker) undertakes to act as an intermediary for another person (the mandator) who enters into contracts with third persons or to indicate to the mandator opportunities for entering into contracts with third persons, and the mandator undertakes to pay a fee (a brokerage fee) for such activities to the broker.

(2) The provisions regulating authorisation agreements apply to brokerage contracts unless the provisions of this Chapter provide otherwise.

§ 659. Restriction on acceptance of performance of obligation

A broker has the right, on behalf of the parties to a contract regarding which the broker is the intermediary or to which the broker refers a party, to accept payments and the performance of other obligations arising from the contract if the broker holds separate authorisation therefor.

§ 660. Prohibition on giving incorrect advice

A broker shall not suggest to the mandator that the mandator should enter into a contract with a person with regard to whom the broker is aware or ought to be aware of circumstances which give reasonable basis for doubt as to whether the person will be able to perform the obligations arising from the contract in an appropriate manner.

§ 661. Failure to disclose identity of party to contract

Upon the request of a party to a contract for whom the broker is acting as an intermediary, the broker may refuse to disclose the identity of the party to the other party.

§ 662. Preservation of documents

A broker shall preserve documents related to the professional activities of the broker for as long as these documents are relevant to protect the interests of a mandator, but not for less than three years. This requirement does not preclude or limit the duties of a broker arising from law related to the preservation of accounting records.

§ 663. Duty to maintain records concerning contracts

(1) A broker shall keep chronological records of all contracts entered into regarding which the broker acts as an intermediary or to which the broker refers a party.

(2) If the parties do not enter into a contract in writing, the broker shall immediately, at the request of the party to the contract for whom the broker acts as an intermediary or who was referred to the contract by the broker, present an extract signed by the broker which sets out the terms and conditions of the contract.

§ 664. Duty to pay brokerage fee

(1) A broker has the right to a brokerage fee as of the entry into a contract as a result of the broker acting as an intermediary or referring a party to the contract.

(2) If, pursuant to a brokerage contract, the right to receive a brokerage fee arises for the broker after performance of an obligation in respect of the mandator arising from the contract regarding which the broker acts as an intermediary or to which the broker refers a party, the broker also has the right to a brokerage fee if the obligation is not performed due to circumstances depending on the mandator.

(3) The right of a broker to a brokerage fee is not affected if the contract regarding which the broker acts as an intermediary or to which the broker refers a party is entered into or an obligation arising therefrom is performed after termination of the brokerage contract.

(4) If a contract regarding which the broker acts as an intermediary or to which the broker refers a party is entered into with a suspensive condition, the broker has the right to demand payment of the brokerage fee only upon fulfilment of the condition. If a contract is entered into with a resolutive condition, the right to the brokerage fee does not extinguish with the fulfilment of the condition.

(5) A broker shall retain the right to a brokerage fee also in the case where a contract

entered into under the intermediation or referral of the broker is invalid, provided that the broker was not aware and did not have to be aware of the reason for such invalidity. If a contract is cancelled or a party withdraws from a contract due to a fundamental breach of the contract, the broker does not have the right to a fee if the broker was aware or ought to have been aware that the breach of contract was likely.

(6) If a brokerage contract is entered into for a broker to act as an intermediary in the contraction of marriage or to refer to an opportunity for the contraction of marriage, the obligation arising from such contract is imperfect. Any other obligation which a mandator assumes with regard to a broker is also imperfect if the objective of the obligation is payment of a fee acting as an intermediary in the contraction of marriage or for referring to an opportunity for the contraction of marriage.

§ 665. Size of brokerage fee

If the size of the brokerage fee has not been agreed, it shall be deemed to be the size of the standard local brokerage fee for acting as an intermediary for or referring to the opportunity to enter into such contracts or, in the absence thereof, a reasonable amount of remuneration.

§ 666. Reduction of brokerage fee

If the parties have agreed on an unreasonably high brokerage fee, a court may reduce the fee to a reasonable size on the application of the mandator.

§ 667. Reimbursement of expenses of broker

(1) A broker has the right to demand that expenses incurred upon the performance of a brokerage contract be reimbursed only if so agreed separately.

(2) If a contract regarding which a broker acts as an intermediary or to which a broker refers a party is not entered into, the broker still has the right to demand that expenses incurred upon the performance of the brokerage contract be reimbursed if so agreed separately.

§ 668. Activities of broker for benefit of other party

(1) If, contrary to a brokerage contract, the broker has also acted for the benefit of another party to a contract regarding which the broker has acted as an intermediary on behalf of the mandator or to which the broker has referred the mandator, the broker does not have the right to demand payment of a brokerage fee or the reimbursement of expenses by the mandator.

(2) If a broker has acted for the benefit of another party to a contract regarding which the broker has acted as an intermediary on behalf of the mandator or to which the broker has referred the mandator, it is presumed that the parties to the contract shall pay an equal share of the brokerage fee.

§ 669. Specifications of liability of broker

(1) A broker is not liable for the performance of a contract regarding which the broker acts as an intermediary or to which the broker refers a party.

(2) In the case specified in § 661 of this Act, a broker shall be liable for the performance of the obligations by the party to the contract regarding which the broker acts as an intermediary or to which the broker refers the party whose identity the broker refused to disclose.

Chapter 38

Agency Contract

§ 670. Definition of agency contract

(1) By an agency contract, one person (the agent) undertakes, in the interests of and for the benefit of another person (the mandator), to negotiate or enter into contracts in the name and on account of the mandator independently and on a permanent basis. The mandator undertakes to pay a fee to the agent therefor.

(2) An agent acts independently if the agent has the right to a large extent to organise the activities and determine the working hours of the agent freely.

(3) A person who performs the obligations specified in subsection (1) of this section on the basis of an employment contract entered into with a mandator is not deemed to be an agent. Members of the directing body, partners or trustees in bankruptcy of a mandator who is a legal person who have the right arising from law or from the statutes, articles of association or partnership agreement to assume obligations for the legal person are also not deemed to be agents.

(4) The provisions for authorisation agreements apply to agency contracts unless the provisions of this Chapter provide otherwise.

§ 671. Acting as agent as principal or ancillary activity

Acting as an agent may be the principal activity or an ancillary activity of an agent. Acting as an agent is deemed to be an ancillary activity if the person is not principally active as an

agent or does not obtain the greater part of the person's income therefrom. In the event of a dispute, the mandator may rely on the fact that acting as an agent is an ancillary activity of the person only if this is clear from the agency contract.

§ 672. Document setting out content of agency contract

Each party has the right to demand that the content of the agency contract, of any amendments thereto and of any additional agreements be set out in a document signed by the other party. Any agreements which restrict or limit this right are void.

§ 673. Obligations of agent

(1) An agent shall perform the obligations thereof with the diligence normally expected from a person acting for the purposes of the person's economic or professional activities, including by making reasonable efforts in the interests of the mandator to enter into or negotiate contracts. An agent shall immediately inform the mandator of every contract negotiated or entered into by the agent and also of other circumstances which are relevant for compliance with the interests of the mandator.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(2) Agreements which derogate from the provisions of subsection (1) of this section and subsection 621 (1) of this Act are void.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

§ 674. Obligations of mandator

(1) A mandator shall do everything to enable the agent to act successfully, including:

1) placing, at the mandator's expense, documents which are necessary for the agent's activities at the disposal of the agent, including examples, drawings, price lists, printed advertising matter and the terms and conditions of a contract;

2) informing the agent of circumstances necessary for the performance of the agent's obligations and carefully checking any notices submitted by the agent;

3) immediately informing the agent of the entry into a contract negotiated by the agent, of approval of a contract entered into by the agent without the right of representation or exceeding the limits of the right of representation, and of failure to perform a contract negotiated or entered into by the agent;

4) informing the agent immediately if the mandator anticipates that the extent of contracts entered into by the mandator will be significantly lesser than that which the agent

could normally have expected.

(2) Any agreements which derogate from the provisions of subsection (1) of this section are void.

§ 675. Several mandators or agents

(1) An agent may also act for the benefit of other mandators unless otherwise agreed in writing.

(2) A mandator may also authorise other persons to perform the same obligations as the agent. If a mandator has assigned a particular area to the agent or has determined a group of customers for the agent with whom the agent is to negotiate or enter into contracts, the agent has the exclusive right to negotiate and enter into contracts in the name and on account of the mandator in that area with that group of customers unless agreed otherwise in writing.

§ 676. Specifications of authority of agent

(1) An agent has the right to accept notices concerning defects of things and also other declarations through which the other party to a contract negotiated or entered into by the agent performs the rights arising from unsatisfactory performance of the contract. An agent also has this right in the case where the agent does not have the right to enter into contracts in the name of the mandator.

(2) The restriction of the right specified in subsection (1) of this section is valid with regard to the other party to a contract negotiated or entered into by the agent only in the case where the other party was aware or ought to have been aware of the restriction upon submission of the notice or other declaration.

(3) An agent may accept monetary payments or the performance of obligations arising from contracts negotiated or entered into by the agent and may make declarations of intent for the amendment of contracts, above all with respect to deadlines for payment, only if this is prescribed in the agency contract.

(4) If an agent has entered into a contract in the name of the mandator without having the authority to do so and the other party to the contract was not aware of the agent's lack of authority, the contract is deemed to have been approved by the mandator unless the mandator, immediately after the agent or other party informs the mandator of entry into the contract and of the contents thereof, informs the other party of the mandator's refusal to approve of the contract.

§ 677. Specifications of authority of insurance agent

(1) An agent who is authorised on a permanent basis to negotiate or enter into insurance contracts (an insurance agent) is deemed to have been authorised to do the following in the insurance sector and area assigned to the agent:

1) accept offers to enter into, extend or/ and amend insurance contracts, and applications for the withdrawal of such offers;

2) accept notices forwarded by policyholders during the term of insurance contracts, applications for cancellation or declarations of withdrawal and other applications concerning insurance contracts;

3) accept insurance premiums, interest and compensation for expenses.

(2) An insurance agent has the right to perform all legal acts relating to the contracts negotiated or entered into by the agent.

(3) If the authority of an insurance agent specified in subsections (1) and (2) of this section has been restricted, the restriction is valid with respect to a third party only where the third party was aware or ought to have been aware of the restriction with respect to the insurance agent upon performance of a legal act. Any agreements which derogate from this are void.

§ 678. Contracts on which agency fee shall be paid

(1) An agent has the right to an agency fee on all the contracts entered into by the mandator as a result of the activities of the agent during the term of the agency contract. An agent also has the right to an agency fee on contracts entered into with a person who, as a result of the activities of the agent, entered into a permanent business relationship with the mandator for entry into such contracts which were usually negotiated or entered into by the agent. An insurance agent has the right to an agency fee only on contracts negotiated or entered into by the agent in the name of the mandator.

(2) If a specific area has been assigned to an agent or if the group of customers of the agent has been determined, the agent has, in addition to the provisions of subsection (1) of this section, the right to an agency fee on contracts entered into during the term of the agency contract without the agent's participation with persons in the area or belonging to the group of customers assigned to the agent. An insurance agent does not have the right to receive an agency fee for such contracts.

(3) An agent also has the right to an agency fee on contracts entered into after the expiry of the agency contract if the agent has negotiated the contract or prepared the entry into the contract such that entry into the contract could be deemed, for the most part, to be the result of the activities of the agent and if the contract was entered into within a reasonable time after expiry of the agency contract, and also on contracts for which the agent has the right to receive an agency fee pursuant to the provisions of subsection (1) and (2) of this section if an offer by a third party for entry into such contract reaches the agent or mandator before expiry of the agency contract.

(4) An agent does not have the right to receive an agency fee for contracts on which an

agency fee is paid to the previous agent pursuant to subsection (3) of this section. The agency fee shall be divided between the agents if this is justified under the circumstances.

§ 679. Prerequisites for payment of agency fee

(1) The right of an agent to an agency fee arises when the mandator has performed the obligations of the mandator arising from a contract negotiated or entered into by the agent.

(2) If the parties have agreed that the agency fee is to be paid later than provided in subsection (1) of this section, the agent has the right to receive a reasonable advance payment. The right of the agent to an agency fee still arises as soon as the other party to the contract negotiated or entered into by the agent has performed the obligations of the party arising from the contract.

(3) The right of an insurance agent to an agency fee arises when the policyholder has paid the insurance premium from which the agency fee is to be calculated according to the agency contract.

(4) An agent does not have the right to an agency fee if it is evident that the contract is not performed due to a circumstance beyond the control of the mandator. In such case the agent shall refund the fee received pursuant to the provisions concerning unjustified enrichment.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(5) An agent also has the right to an agency fee if the mandator does not perform the contract and if the non-performance is caused by circumstances dependent on the mandator.

(6) The claim of an agent for an agency fee falls due on the last day of the month during which, pursuant to the provisions of subsection 682 (1) of this Act, the size of the agency fee is to be calculated.

(7) Any agreements which derogate from the provisions of subsections (4)-(6) of this section to the detriment of an agent are void.

§ 680. Size of agency fee

(1) If the size of the agency fee has not been agreed, the standard local agency fee or, in the absence thereof, a reasonable amount of remuneration shall be deemed to be the agreed amount.

(2) The agency fee shall be calculated according to the contract entered into as a result of the activities of an agent from the amount payable by the other party to the contract or by the mandator. Accessory expenses, including transportation and packaging costs and other payments, shall be deducted from the amount only if they are indicated separately.

(3) In the case of contracts for use, the agency fee shall be calculated from the user fee for the entire term of the contract.

§ 681. Additional agency fee for liability

(1) If an agent, by agreement with the mandator, undertakes to be liable for the performance of an obligation of the other party arising from a contract negotiated or entered into by the agent, this obligation shall be expressed in written form.

(2) If an agent undertakes to be liable for the performance of an obligation specified in subsection (1) of this section, the agent has the right to receive an additional fee therefor (*del credere* commission). Any agreements which preclude the right of agents to receive *del credere* commission are void.

(3) The right of an agent to *del credere* commission arises as of entry into a contract from which obligations arise for the performance of which the agent is liable.

§ 682. Calculation of agency fee

(1) A mandator shall calculate the fee payable to an agent on a monthly basis. The calculation period may be extended to three months by agreement.

(2) The calculation of the agency fee shall be forwarded to the agent not later than by the end of the month following the calculation period. The calculation of the agency fee shall set out the size of the agency fee and the circumstances which are relevant for the determination thereof.

(3) Upon receipt of a calculation, an agent may demand submission of an extract from the accounting documentation of the mandator concerning all contracts on which an agency fee is to be paid to the agent pursuant to § 678 of this Act. Submission of an extract may be demanded later only if the parties have not reached an agreement concerning the calculation.

(4) In addition to a calculation of the agency fee and an extract from the accounting records, an agent may demand that information be submitted on all circumstances relevant to the claim for an agency fee, to the date on which it falls due and to the method of its calculation.

(5) If a mandator refuses to provide a calculation or an extract or if an agent has reason to doubt the correctness or completeness of the calculation, the agent may demand that the mandator allow either the agent or an auditor appointed by the agent, whichever the agent chooses, to examine the mandator's accounting records to the extent necessary to certify the correctness or completeness of the calculation or the extract. If the mandator allows the agent to examine the records, the agent has the right to use the assistance of an auditor in such examination.

(6) Any agreements which preclude or restrict the rights of an agent provided for in subsections (1)-(5) of this section are void.

§ 683. Collection charge

In addition to an agency fee payable on contracts entered into, an agent has the right to an additional fee payable on amounts collected according to the orders of the mandator and delivered to the mandator.

§ 684. Reimbursement of expenses of agent

(1) An agent may demand that reasonable expenses incurred thereby upon the performance of an agency contract be reimbursed if they exceed the expenses usually incurred upon the performance of this type of agency contract. An agent may demand that expenses usually incurred upon the performance of an agency contract be reimbursed if so agreed upon or if this is usual under the circumstances.

(2) An agent may demand that expenses be reimbursed regardless of whether the agent has the right to receive an agency fee.

§ 685. Right of security

(1) In order to secure claims arising from an agency contract which have fallen due, the agent has the right of security over the movables and securities of the mandator which, on the basis of the agency contract, are in the possession of the agent, and also to payments made by third parties and received by the agent in the case where the agent has the right to receive such payments. An agent may refuse to hand over documents only in the case where this is necessary to secure claims for an agency fee or for the reimbursement of expenses which have fallen due.

(2) Any agreements to waive or restrict the right of security are void.

§ 686. Ordinary cancellation of agency contract

(1) Each party to an agency contract entered into for an unspecified term have the right to cancel the contract by giving at least one month's advance notice. If the contract has been in force for more than one year and acting as an agent has been the agent's principal activity, the mandator shall give the agent at least two months' advance notice of cancellation of the contract. If the contract has been in force for more than two years and acting as an agent has been the agent's principal activity, the mandator shall give the agent at least three months' advance notice of cancellation of the contract. The contract may be cancelled only at the end of a month.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(2) Any agreements by which the terms for cancellation specified in subsection (1) of this section are extended such that the term for cancellation prescribed for a mandator is shorter than the term for cancellation prescribed for the agent are void.

(3) If the parties continue to perform an agency contract after expiry of the term of the contract, the contract is deemed to become an agency contract for an unspecified term after expiry of the term.

§ 687. Preclusion of extraordinary cancellation of agency contract

Any agreements which preclude or restrict the right to cancel an agency contract with good reason are void.

§ 688. Right of agent to compensation for termination of contract and compensation for damage caused by termination of contract

(1) An agent has the right to receive separate compensation (termination-of-contract compensation) upon termination of an agency contract if:

1) the agent has created business relationships with new clients for a mandator or significantly extended the existing business relationships of the mandator, and

2) the mandator has significantly benefited from such business relationships even after termination of the agency contract, and

3) due to the termination of the agency contract, the agent loses the right to an agency fee which, had the contract continued, the agent would have been entitled to on contracts which were already entered into or would have been entered into in the future with persons who, as a result of the activities of the agent, entered into a permanent business relationship with the mandator for entry into contracts which were usually negotiated or entered into by the agent, and

4) payment of compensation is justified taking into consideration all the circumstances.

(2) An agent does not have the right to demand payment of a termination-of-contract compensation which exceeds the average annual fee of the five last years of the agent's activity or, if the agency contract was in force for a shorter period, a termination-of-contract compensation which exceeds the average annual fee of the entire period of the duration of the contract. If the agency contract was in force for less than one year, the agent does not have the right to demand payment of a compensation in an amount which exceeds the size of the agency fee earned during the entire term of the contract.

(3) Payment of a termination-of-contract compensation does not preclude or restrict the right of an agent to demand compensation for damage caused to the agent by the termina-

tion of the agency contract. Such damage is presumed to exist if an agent does not receive the agency fee which the agent would have earned had the agency contract continued, while at the same time the mandator gained substantial income due to the activities of the agent. Such damage is also presumed to exist if the agent was unable to amortise expenses which the agent incurred due to performance of the agency contract and following the instructions provided by the mandator.

(4) An agent does not have the right to a termination-of-contract compensation or compensation for damage specified in subsection (3) of this section if:

1) the agency contract is cancelled by the agent, except in the case where the reason for cancellation is a circumstance dependent on the mandator or the age or state of health of the agent which does not enable the agent to continue the activities thereof;

2) the agency contract is cancelled by the mandator due to the wrongful behaviour of the agent;

3) after termination of a contract, the mandator and the agent enter into an agreement pursuant to which the agent is substituted by a third party who pays a fee to the departing agent in an amount equal to the termination-of-contract compensation and compensation for damage to which the agent would otherwise be entitled;

4) acting as an agent was an ancillary activity of the agent.

(5) Any agreements entered into before the termination of an agency contract which preclude or restrict the right of an agent to a termination-of-contract compensation or compensation for damage are void.

§ 689. Restraint of trade clause

(1) Any agreement which restricts the economic activity of an agent after the termination of an agency contract (a restraint of trade clause) shall be entered into in writing.

(2) An agreement on a restraint of trade clause shall be entered into for a term of up to two years after termination of the agency contract and shall only extend to the area determined by the agency contract or to the group of customers with whom the agent was to negotiate or enter into contracts pursuant to the agency contract and only to contracts which the agent was to negotiate or enter into.

(3) The mandator shall pay reasonable compensation to the agent for the period of the duration of the restraint of trade clause even if this has not been agreed.

(4) Until to the termination of the agency contract, the mandator has the right to cancel an agreement on a restraint of trade clause in writing. If the agency contract expires within six months as of the date on which the mandator cancels a restraint of trade clause, the mandator shall pay the compensation specified in subsection (3) of this section to the agent for the period of time between the date on which the agency contract expired and the date when six months have passed from the cancellation of the restraint of trade clause.

(5) If an agency contract is cancelled due to a violation of the contract by a party, the cancelling party may also cancel the restraint of trade clause within one month. In such case, the mandator is not required to pay the compensation specified in subsection (3) of this section.

(6) Any agreements which derogate from the provisions of subsections (1)-(5) of this section to the detriment of the agent are void.

§ 690. Expiry of claims arising from agency contract

(1) The limitation period of a claim arising from an agency contract is four years as of the end of the year in which the claim falls due. Parties to a contract shall not agree on a limitation period shorter than one year.

(2) The limitation period of a claim for termination-of-contract compensation and compensation for damage is one year as of the date of termination of the agency contract.

§ 691. Specifications regarding foreign agent and ship's agent

On the agreement of the parties to a contract, the parties may derogate from the provisions of this Chapter in the following cases even if this Act expressly provides or the nature of a provision indicates that derogation from this Act is not permitted:

1) an agent who does not live in Estonia or in a member state of the European Union is acting for the benefit of a mandator who has a place of business or, in the absence thereof, residence or seat in Estonia;

2) an agent negotiates or enters into contracts the object of which is the chartering of ships, preparation of ships for voyage, supply of ships or carriage of passengers by ship.

Chapter 39

Contract of Commission

§ 692. Definition of contract of commission

(1) By a contract of commission, one person (the commission agent) undertakes to enter into a transaction in the commission agent's own name and on account of another person (the principal), above all to sell an object belonging to the principal or buy an object for the principal (the commission object). The principal undertakes to pay the commission agent a fee (commission) therefor.

(2) The provisions regulating authorisation agreements apply to contracts of commission unless the provisions of this Chapter provide otherwise.

(3) The provisions of §§ 671, 672, 678, 681, 682 and 686–689 of this Act also apply to the relationship between a principal and a commission agent if the activity of the commission agent with respect to the principal is of a permanent nature.

§ 693. Instructions of principal

(1) If a commission agent violates the obligation to adhere to instructions provided by the principal (§ 621 of this Act), the principal has the right to deem a transaction entered into by the commission agent not to have been entered into on account of the principal. In such case, the commission agent shall compensate for damage caused to the principal by the deviation from the instructions provided by the principal.

(2) If a commission agent has sold the commission object for a price lower than that prescribed by the principal or has exceeded the price prescribed to the commission agent for the purchase of the object and if the principal does not want the transaction to be deemed to have been entered into on the principal's account, the principal shall inform the commission agent thereof immediately after having been notified of entry into the transaction. If the principal fails to perform the obligation to notify, the principal is deemed to have approved of the deviation from the prescribed price.

(3) If a commission agent has deviated from the price prescribed by the principal but offers, upon notification of entry into transaction, to offset the price difference, the principal does not have the right to deem the transaction not to have been entered into on the principal's account. In such case, the principal still has the right to demand compensation for damage in the amount which exceeds the price difference.

§ 694. Grant of credit by commission agent

(1) A commission agent does not have the right to make advance payments or grant credit to third parties on account of the principal without the consent of the principal. It is presumed that a commission agent does not have the right to extend deadlines for payment of the purchase price or the right to allow payment in instalments.

(2) If, upon the sale of a commission object, the commission agent grants credit to the purchaser or agrees to postpone the deadline for payment of the purchase price without the consent of the principal, the commission agent shall immediately pay the entire purchase price to the principal. If the purchase price would have been lower in the case of sale without granting credit, the commission agent is only required to pay the lower price.

§ 695. Entry into contract on more favourable terms and conditions

If a commission agent enters into a contract on more favourable terms and conditions than the terms and conditions prescribed by the principal, the performance of the contract of commission shall be based on the more favourable terms and conditions.

§ 696. Commission agent as seller or purchaser

(1) The commission agent may be the purchaser of the commission object to be sold by the commission agent or the seller of the commission object to be purchased by the commission agent only if a conflict of interests is precluded. The provisions of § 623 of this Act shall apply correspondingly.

(2) If a commission agent purchases the commission object to be sold by the commission agent or sells the commission object to be purchased by the commission agent, the commission agent has the right to the commission usually paid under similar circumstances and to the reimbursement of expenses usually incurred, as well as the rights provided in § 702 of this Act.

§ 697. Commission agent as seller or purchaser on stock exchange or other regulated market

(1) If a commission object is sold or purchased on a stock exchange or another regulated market, the commission agent may be the purchaser of the object to be sold by the commission agent or the seller of the object to be purchased by the commission agent unless otherwise prescribed by the principal. If in such case the commission agent is the purchaser or seller of the commission object, the obligation of the commission agent to notify (subsection 624 (2) of this Act) shall be limited to certification provided by the commission agent to the principal with respect to adherence by the commission agent, upon the purchase or sale of the commission object, to the exchange or market price of the object at the time of entry into the transaction.

(2) Upon the sale or purchase of an object with a quoted exchange or market price, a commission agent who is the seller or purchaser of the object shall not set a more unfavourable price for the principal than the exchange or market price which has been set officially.

(3) If a commission agent, by acting with due diligence upon the performance of the obligations of the agent, could have purchased or sold the commission object at a more favourable price than the price specified in subsections (1) and (2) of this section, the commission agent shall set the more favourable price for the principal.

(4) Agreements which derogate from the provisions of subsections (1)-(3) of this section to the detriment of the principal are void.

§ 698. Defective commission object

(1) If a commission agent is required to purchase an object for the principal, the commission agent shall perform all the obligations of a purchaser, including the obligation to examine the object and inform the seller of any deficiencies discovered.

(2) If a commission object delivered by the principal for sale by the commission agent is defective at the time of delivery and the deficiency can be detected by external examination of the object, the commission agent shall make sure that the object is preserved and that the existence of the defect can be certified and shall immediately inform the principal of the deficiency. If a commission object is damaged during carriage, the commission agent shall do everything in the agent's power to prevent the loss of possible claims of the principal against the carrier. In the event of violation of such obligations, the commission agent shall reimburse the expenses caused thereby to the principal.

(3) If the commission object is highly perishable or rapid depreciation in the value of the object is to be anticipated and there is no time to obtain instructions from the principal or the principal delays the provision thereof, the commission agent has the right to sell the commission object on account of the principal pursuant to the provisions of section § 125 of this Act. The commission agent may be required to sell the commission object depending on the circumstances.

§ 699. Liability of commission agent for commission object

(1) A commission agent shall be liable for the loss of and damage to a commission object delivered to the commission agent, unless the loss or damage did not occur due to the fault of the commission agent.

(2) A commission agent is required to insure a commission object only if so agreed or if the commission agent has been instructed to do so by the principal. A commission object shall be insured on account of the principal.

§ 700. Liability of commission agent for obligations of third parties

(1) A commission agent shall be liable for the performance of obligations of a third party arising from a contract entered into by the commission agent on account of a principal if:

1) separately agreed in the contract of commission;

2) the liability arises from a local custom at the location of the activities of the commission agent acting for the purposes of the agent's commercial or professional activities,

3) upon notification of entry into the transaction, the commission agent does not disclose the name of the third party with whom the agent enters into the transaction.

(2) In the case provided for in subsection (1) of this section, the commission agent shall be liable for the performance of the obligation of a third party in the same manner as the third party.

§ 701. Commission

(1) If the amount of commission has not been agreed, it shall be deemed to be the standard amount of local commission or, in the absence thereof, a reasonable amount of remuneration. If, in the case specified in clauses 700 (1) 1) or 2) of this Act, a commission agent is liable for the performance of an obligation of a third party, the commission agent has the right to demand reasonable remuneration therefor (*del credere* commission).

(2) A commission agent has the right to demand payment of commission if a contract entered into on account of the principal was performed by a third party or if the contract was not performed due to circumstances dependent on the principal. A commission agent does not have the right to demand payment of commission if a contract was not performed for other reasons, although the commission agent may demand the reimbursement of expenses incurred in the course of performing the activities of the agent in an amount deemed to be reasonable under the circumstances.

§ 702. Right of security of commission agent

(1) A commission agent has the right of security over a commission object in the agent's possession, including if the possession arises from a bill of lading, warehouse receipt or other document granting the right of disposal, in order to secure the following claims:

1) a claim for reimbursement of expenses incurred on a commission object;

2) a claim for payment of commission;

3) a claim for compensation of advance payments made with the consent of the principal in order to acquire a commission object;

4) a claim for release from obligations assumed with respect to a commission object with the consent of the principal.

(2) A commission agent also has the right of security and rights arising therefrom if the commission object belongs to the agent or the agent is the purchaser or seller of the object.

(3) If the principal is declared bankrupt or enforcement proceedings are initiated against the principal, the commission agent has the right to satisfy the claims specified in subsection (1) of this section out of the money received upon performance of the contract of commission before the principal and the obligees thereof.

Chapter 40

Payment Order and Settlements

Division 1

Payment Order

§ 703. Payment order

(1) With a payment order, the authorised person is ordered to pay or transfer, at the expense of the originator, money or securities to a third party (beneficiary), and the beneficiary is entitled to accept the execution of the order.

(2) A payment order may be given, inter alia, by means of bill of exchange, cheque, credit card or any other similar payment instrument.

§ 704. Acceptance of payment order

Acceptance of a payment order is a declaration of intent by which the authorised person accepts the obligation arising from the payment order. The acceptance of a payment order issued in the form of a document shall be entered on the document.

§ 705. Execution of payment order

(1) The authorised person who has accepted the payment order shall undertake to perform the obligation arising from the payment order and may contest the claim of the beneficiary to execute the payment order only in so far as it arises from the relationship with the beneficiary or from the validity of the payment order or acceptance, and not from the relationship with the originator.

(2) If a payment order is issued in the form of a document, the authorised person shall perform the obligation arising from the payment order only if the document has been delivered to the authorised person.

(3) The authorised person is not required to accept a payment order or perform obligations arising therefrom only because the authorised person is an obligor of the originator. Upon execution of a payment order, the authorised person is however released from the obligations thereof to the extent to which the payment order is executed.

§ 706. Notification obligation of beneficiary

(1) If a beneficiary learns that the authorised person refuses to accept the payment order or perform the obligation arising therefrom, the beneficiary shall immediately notify the

originator thereof.

(2) In the event of a violation of the notification obligation provided in subsection (1) of this section, the originator has the right to demand compensation from the beneficiary for damage caused by the violation of the obligation.

§ 707. Withdrawal of payment order

Until the authorised person has accepted a payment order or performed the obligation arising therefrom, the originator has the right to withdraw the payment order even if the originator thereby violates the obligations thereof to the beneficiary. In order to withdraw a payment order, the originator shall notify the authorised person thereof.

§ 708. Restrictions on expiry of payment order

A payment order does not expire upon the death or declaration of bankruptcy of the originator, authorised person or beneficiary.

Division 2

Settlement Contract

Subdivision 1

General Provisions

§ 709. Definition of settlement contract

(1) A settlement contract is a contract whereby the authorised person entitled to settlement pursuant to law (account manager) undertakes to open an account for the originator and, at the originator's request to perform operations with the funds in the account or with any other rights, and the originator undertakes to pay a fee therefor. Among other obligations, an account manager undertakes to execute payments at the originator's request, to credit the originator's account to the extent of the payments received for the benefit of the originator, to make payments in cash from the account to the originator at the request of the latter and to accept payments.

(2) An account manager undertakes to collect a cheque presented to the account manager by the originator from the payer for the benefit of the originator. An account manager shall ensure that the cheque is presented to the payer on time and, if the cheque remains

uncashed, apply measures to protect the interests of the originator.

(3) The provisions of this Division also apply to the correspondent account and other accounts of the account manager unless otherwise provided by law or by a contract.

Settlements at and with the Bank of Estonia shall be performed on the basis of the Bank of Estonia Act (RT I 1993, 28, 498; 30, correction notice; 1994, 30, 463; 1998, 64/65, 1006; 1999, 16, 271; 2001, 58, 353; 59, 358; 2002, 57, 356; 2003, 15, 88; 21, 121) and legislation arising therefrom.

§ 710. Obligation of account manager to enter into settlement contract

If a person and the terms and conditions of the contract applied for by the person comply with the provisions of law and with the standard terms used by the account manager, the account manager shall enter into a settlement contract with the person at the request of the person.

§ 711. Information concerning settlement conditions

An account manager shall, without charge, provide each interested person with information concerning settlement conditions and expenses related to settlement. Information shall be provided at the account manager's place of business in a format which can be reproduced in writing or shall be forwarded by electronic means to interested persons or shall be published on the account manager's web site.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

§ 712. Joint account

If an account is opened for several originators jointly, the originators shall be solidarily liable for performance of the obligations arising from the settlement contract.

§ 712[1]. Obligations of account manager upon provision of financial collateral

(1) Upon encumbrance of money in an account, a deposit or another similar financial claim (hereinafter in this section cash instruments) with financial collateral specified in § 314[1] of the Law of Property Act, an account manager is required to maintain records on cash instruments in the account such that the cash instruments subject to financial collateral are separated from other cash instruments held in the account of the pledgor.

(2) An account manager is required:

1) as of the date of entry into force of the irrevocable right to dispose of the cash instruments encumbered with financial collateral granted to the pledgee and communicated to the account manager by the pledgor, to fulfil only the orders of the pledgee to debit the corresponding account with an amount not exceeding the cash instruments encumbered with financial collateral;

2) until the date specified in clause 1) of this subsection, to fulfil the joint orders of the pledgor and pledgee to debit the corresponding account with an amount not exceeding the cash instruments encumbered with financial collateral.

(22.04.2004 entered into force 01.05.2004 - RT I 2004, 37, 255)

§ 713. Making of entry in account

(1) The crediting of an account is the making of an entry in the account which increases the obligations of the account manager to the originator or reduces the obligations of the originator to the account manager. The originator's account shall be deemed to be credited if the account manager has made a credit entry in the originator's account.

(2) The debiting of an account is the making of an entry in the account which reduces the obligations of the account manager to the originator or increases the obligations of the originator to the account manager. The originator's account shall be deemed to be debited if the account manager has made a debit entry in the originator's account.

(3) An account manager may debit the originator's account:

1) on the instruction of the originator;

2) at the request of a third party under the conditions prescribed by the settlement contract;

3) in other cases provided by law.

(4) An account manager may debit the originator's account by way of set-off only to set off claims arising from the settlement contract, including to set off the claim for the fee payable to the account manager for settlements.

(5) The provisions of subsection (4) of this section do not apply to payment systems.

§ 714. Keeping of records by and notification obligation of account manager

(1) An account manager shall keep records of the crediting and debiting of the originator's account.

(2) The originator may, at any time, demand information at the originator's expense concerning the balance of the account and details of the crediting or debiting of the account.

On discovering an erroneous entry made in the account, the originator shall promptly notify the account manager thereof.

(3) An account manager shall submit a statement of account to the originator at agreed intervals. The account manager shall not demand payment from the originator for a statement of account or the forwarding thereof. Unless otherwise agreed, a statement of account concerning a calendar year shall be forwarded by 15 January of the following year at the latest.

§ 715. Instruction by originator

(1) On crediting or debiting an account, an account manager shall be bound by the instruction provided by the originator. Instructions may be made for making single or recurrent payments.

(2) If the originator's account contains insufficient funds for the execution of the instruction, the account manager shall execute the instruction only if so agreed. If the account manager executes the instruction without a previous agreement serving as the basis therefor, it shall be deemed that the account manager has granted an overdraft to the originator.

(3) An account manager shall only execute an instruction from the originator, which is prepared in compliance with legislation and the contract and which expressly demonstrates the intention of the originator.

(4) If an instruction does not comply with the conditions provided in subsection (3) of this section, the account manager shall grant the originator a reasonable term to clarify the instruction. If the originator fails to clarify the instruction during the set term, the account manager shall return the instruction to the originator or notify the originator in any other manner that the instruction remained unexecuted.

(5) An account manager is not required to execute a conditional instruction from the originator. In the event that a conditional instruction is executed, the instruction shall be deemed to be unconditional.

(6) At the request of the originator, the account manager shall promptly notify the originator of the execution of the instruction or the state thereof, unless otherwise provided by law.

§ 716. Deviation from originator's instruction

If an account manager unjustifiably debits the originator's account, including if the account manager unjustifiably deviates from the originator's instruction, the account manager shall credit the account to the extent of the debited amount.

§ 717. Obligation to pay interest

(1) An account manager shall pay interest to the originator for the funds deposited in the originator's account. Interest shall be calculated on an annual basis and interest shall be transferred to the originator's account at least once a year.

(2) If the interest rate specified in subsection (1) of this section is not prescribed by the contract, the interest rate shall be that which account managers normally pay for demand deposits (call deposits).

(3) An account manager shall credit the originator's account with interest calculated for the period of violation at a rate not lower than that specified in § 94 of this Act on the amount related to the violation if the account manager:

1) fails to credit the originator's account on time to the extent of the funds received for the originator;

2) debits the account incorrectly;

3) fails to perform the transfer or disbursement order of the originator on time.

§ 718. Account maintenance and commission fee

(1) An account manager may agree on an annual maintenance and commission fee for the account with the originator. The size of the fee shall not exceed the interest rate provided in subsection 717 (2) of this Act.

(2) The provisions of subsection (1) of this section and subsection 717 (3) of this Act do not apply to securities accounts.

§ 719. Obligation to maintain confidentiality

(1) An account manager and the payment intermediary shall, both during the term of the settlement contract and upon expiry thereof, maintain the confidentiality of all information of which they become aware on the basis of their relationship with the originator, including information concerning the originator and the account and settlements thereof, unless the right or obligation to disclose information arises from law.

(2) An account manager shall be released from the obligation to maintain confidentiality to the extent that the originator has granted consent to the disclosure of information in a format which can be reproduced in writing.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

§ 720. Expiry of settlement contract

(1) The originator has the right to cancel the settlement contract at any time. An account manager may cancel a contract only if the originator materially violates an obligation arising from the contract.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(2) If the originator's account does not contain the minimum amount of funds established by the account manager, the account manager may grant a term of at least one month to the originator for the minimum amount to be restored. If the originator fails to restore the minimum amount within the specified term, the account manager may cancel the settlement contract.

(3) In cases not specified in subsection (2) of this section, an account manager may cancel a settlement contract entered into for an unspecified term only with good reason if, under the circumstances, the account manager cannot be expected to continue performing the contract.

(4) (Repealed - 19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(5) Upon expiry of a settlement contract, the account manager shall pay the funds in the account to the originator or a third party designated by the originator, or transfer the funds to an account with the same or another account manager as specified by the originator.

(6) If a payment made to the originator is received by the account manager within one month as of the expiry of the settlement contract, the account manager shall accept the payment, notify the originator thereof and pay the amount pursuant to the provisions of subsection (5) of this section.

§ 721. Mandatory nature of provisions

Agreements which derogate from the provisions of Division to the prejudice of an originator who is a consumer are void.

Subdivision 2

Transfers

§ 722. Information on transfer conditions

(1) An account manager shall provide each interested person with at least the following information concerning transfer conditions in a format which can be reproduced in writing including, if possible, by electronic means:

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

1) the term within which the account of the account manager of the recipient is credited to the extent of the transfer originated at the account manager, and the start of the term;

2) the term within which the account manager credits the recipient's account with the amount received by the account manager for the benefit of the recipient;

3) the types of charges and fees payable by the originator of the transfer or the recipient to the account manager in connection with the transfer, and the manner of calculation and the size thereof;

4) the value date, if any, applied by the account manager upon transfer;

5) details of the possibilities available to the originator to submit complaints and claims for compensation, and the procedure for resolution thereof;

6) in the case of cross-border transfers, the bases for applying the exchange rates used.

(2) At the request of the originator of a cross-border transfer, the account manager shall agree separately on the time required for execution of the transfer and on charges payable, except for the potential exchange rate used.

§ 723. Cross-border transfer

A cross-border transfer is a transaction executed on the initiative of an originator thereof via a credit or financial institution or its branch which is the account manager located in one state, with a view to making an amount of money available to the recipient at its account manager located in another state. The originator and the recipient may be one and the same person.

§ 724. Payment intermediary

A payment intermediary is a person who participates in the execution of a transfer by agreement with the originator's account manager or the recipient's account manager, and who is not the originator or the recipient of the transfer.

§ 725. Execution of transfer order

(1) The originator's account manager, any payment intermediaries and the recipient's account manager shall execute the transfer in full unless the originator has specified that the costs of the transfer are to be borne wholly or partly by the recipient.

(2) At the request of the originator, the account manager shall accept the amount of money required for the transfer in cash.

(3) Upon executing a transfer order, the account manager may use payment intermediaries.

(4) Upon giving an order to execute a transfer to another account manager, the originator's account manager shall also forward information on the originator and the purpose of the transfer noted by the originator to the recipient's account manager. The recipient's account manager shall notify the recipient thereof.

§ 726. Withdrawal of transfer order

(1) The originator may withdraw a transfer order given to the account manager if the originator notifies the account manager thereof and if the account manager, by the time of withdrawal of the transfer order, has not yet accepted the transfer order for execution or performed the obligation arising from the transfer order.

(2) If a transfer is to be executed to another account manager, a transfer order cannot be withdrawn if the originator's account manager no longer has access to the transfer. If a transfer order is executed in a payment system, legislation or the standard terms concerning the system may set out any other time after which the originator does not have the right to withdraw the instruction.

(3) If the originator withdraws the order on time but the account has already been debited, the originator's account manager shall credit the originator's account with the amount of the transfer.

(4) If the order cannot be withdrawn, the account manager shall promptly inform the recipient or the recipient's account manager of the application for withdrawal.

(5) The recipient's account manager shall refund the transfer to the originator's account manager if the latter informs the recipient's account manager of an application to withdraw a transfer order before the receipt of the transfer. If the transfer order is executed in a payment system, legislation or the standard terms concerning the system may set out any other term after which the recipient is not required to refund a transfer made by the account manager.

§ 727. Information on execution of transfer

(1) Upon executing a transfer, the account manager shall notify the originator thereof clearly in a format which can be reproduced in writing, including by electronic means. At least the following information shall be communicated:

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

1) a reference enabling the transfer to be identified;

2) the original amount of the transfer;

3) the amount of all charges and commission fees payable by the originator in relation to such transfer;

4) the value date, if any, applied by the account manager upon transfer.

(2) Where the originator has specified that the charges for the transfer are to be wholly or partly borne by the recipient, the recipient's account manager shall promptly inform the recipient thereof.

(3) If the account manager converts the original amount of the transfer amount into another currency in connection with a transfer, the account manager who converted the amount shall inform the originator of the exchange rate used.

§ 728. Term for executing transfers

(1) The originator's account manager shall perform the originator's transfer order such that the transfer reaches the recipient's account on the banking day designated by the originator (a calendar day which is not a Saturday, Sunday, national holiday or public holiday). If the originator has designated a calendar day which is not a banking day as the date of receipt of the transfer, the date of receipt of the transfer is deemed to be the first banking day following the calendar day designated by the originator.

(2) The account manager may refuse to execute the order if the originator has designated the date of acceptance to be the date of receipt of the transfer by the other account manager. The date of acceptance is the date on which all the necessary information, including information concerning the recipient and the account manager thereof, has been forwarded to the account manager and the originator's account has adequate financial cover for the execution of the transfer or the originator has been granted the credit required therefor.

(3) In the case of a cross-border transfer, the originator's account manager shall transfer the funds to the account of the recipient's account manager by the end of the fifth banking day following the date of acceptance of the transfer order.

(4) After acceptance of a transfer order, the account manager has the right to refuse to execute the order only if the originator is declared bankrupt or if the contract by which the originator has been granted the credit required for the execution of the transfer expires. If a transfer order is executed in a payment system, legislation or the standard terms concerning the system may set out any other date after which the account manager does not have the right to refuse to execute the order.

§ 729. Liability of originator's account manager

(1) If a transfer order is executed only after the expiry of term therefor, the originator's account manager shall credit the originator's account with interest calculated for the time overdue at a rate not lower than that provided in § 94 of this Act on the original transfer amount, unless the delay is attributable to the originator or the recipient.

(2) If the originator's account manager or a payment intermediary has made a deduction from the amount of the transfer in breach of the agreement with the originator, the originator's account manager shall credit, free of all deductions, the amount deducted to the originator or, at the originator's request, the recipient.

(3) If a transfer is not executed within the term prescribed therefor, the originator may grant the account manager an additional term of at least fourteen banking days for the execution of transfer.

(4) If the transfer has not been executed by the expiry of the additional term specified in subsection (3) of this section, the originator may request that the account manager credit the originator's account to the extent of the transfer but in an amount not exceeding the equivalent of 12 500 euro. In addition, the account shall be credited with interest at a rate not lower than that provided in § 94 of this Act and calculated for the period of time from the execution of the transfer order to the crediting of the account.

(5) Upon submission of the application specified in subsection (4) of this section, the originator is deemed to have withdrawn the transfer order.

(6) The account manager has the right to refuse to execute a transfer order if, under the circumstances, the account manager can no longer be expected to execute the transfer order and if the account manager credits the account of the originator to the extent of the amount specified in subsection (4) of this section.

(7) Upon crediting the account of the originator in the case specified in subsections (4) or (6) of this section, the account manager does not have the right to request the originator to pay any fee or reimburse any expenses related to the transfer. The charges and fees related to the transfer and payable by the originator shall be refunded to the originator.

(8) The originator does not have the rights to refund money provided in subsections (4) and (6) of this section and the account manager does not have the obligation provided in subsection (6) of this section if the transfer was not executed due to errors or omissions in the order submitted by the originator to the account manager or if the payment intermediary designated by the originator failed to execute the transfer. In such case, the originator's account manager and other account managers involved shall, as far as is possible, refund the amount of the transfer. The account managers, including the originator's account manager, are not required to refund the charges or interest accrued and they have the right to deduct the costs arising from the recovery if the size thereof can be clearly identified.

(9) The provisions of subsections (1)-(8) of this section do not preclude or restrict the filing of claims on any other basis, primarily the filing of claims arising from unjustified enrichment. The account manager of the originator of a cross-border transfer may, with the agreement of the originator, restrict its liability to a foreign payment intermediary concerning other claims to an amount equivalent to 25 000 euro.

(10) The originator's account manager may, with the agreement of the originator, restrict

its liability for damage caused by the non-execution of a transfer or a delay in the execution of a transfer to an amount equivalent to 12 500 euro.

(11) The restriction of liability provided in subsection (10) of this section does not apply with regard to the originator's claim against the account manager for a penalty for late payment or if damage is caused by the intent or gross negligence of the account manager. Nor does the restriction of liability apply in the case where the account manager has, by a contract, assumed liability for risks related to the circumstances which resulted in the damage.

§ 730. Liability of payment intermediary

(1) If a transfer is not completed because of its non-execution by a payment intermediary, the latter shall be obliged to compensate the originator's account manager for the loss borne thereby and caused by the payment of interest to the originator due to the delay in the transfer.

(2) If a payment intermediary has made deductions from the amount of the transfer in breach of the agreement with the originator, the payment intermediary shall credit the originator's account manager or, at the request of the originator's account manager, the recipient with the specified amount without deducting any additional fees and costs.

(3) The payment intermediary shall compensate the originator's account manager for the amounts payable thereby to the originator pursuant to subsections 729 (4), (6) and (7) of this Act. Similarly, each payment intermediary which has entered into a contract for mediation of the transfer is required to compensate payments made on the basis specified in the preceding sentence to the other party.

(4) No claims provided in subsection (3) of this section may be filed against the payment intermediary if the transfer was not completed because of errors or omissions in the order given by the originator's account manager.

(5) The provisions of subsections (1)-(4) of this section do not preclude or restrict the filing of claims against the payment intermediary on any other basis, including the filing of claims arising from a contract or unjustified enrichment.

(6) Regardless of whether the payment intermediary is liable for the non-execution of the transfer or not, the payment intermediary shall make reasonable attempts to locate the amount of the transfer and shall return the amount of the transfer discovered to the person entitled to make the claim. The payment intermediary is entitled to deduct a reasonable fee for its endeavours from the amount of the transfer returned.

(7) If the transfer is not executed for reasons connected with the payment intermediary chosen by the originator, the originator may exercise the rights provided in subsections 729 (4) and (7) with respect to the payment intermediary.

§ 731. Liability of recipient's account manager

(1) Upon receipt of a transfer from another account manager, the recipient's account manager shall credit the recipient's account with the amount of the transfer not later than on the banking day following the receipt of the transfer, unless otherwise designated by the originator or unless the transfer is to be returned pursuant to subsection 726 (5) of this Act.

(2) If the account manager fails to credit the recipient's account with the amount of the transfer on time, the account manager shall credit the recipient's account with interest at a rate not lower than that provided in § 94 of this Act and calculated for the delay on the amount of the transfer, unless the delay is attributable to the originator or the recipient. The banking day designated for crediting the recipient's account shall serve as the basis upon the calculation of interest.

(3) If the recipient's account manager has made a deduction from the amount of the transfer in breach of the agreement with the recipient, the originator's account manager or the payment intermediary, the recipient's account manager shall credit the recipient's account with the specified amount without deducting any additional fees and costs. This does not preclude or restrict the right of the account manager to the fee for crediting the account and agreed upon in the settlement contract.

(4) If the transfer is not completed for reasons connected with the payment intermediary chosen by the recipient’s account manager, the recipient's account manager shall credit the recipient's account with the amount of the transfer but in an amount not exceeding the equivalent of 12 500 euro without any deductions in the form of fees and costs.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(5) The provisions of subsections (1)-(4) of this section do not preclude or restrict the filing of claims on any other basis, primarily the filling of claims arising from unjustified enrichment. The account manager of the recipient of a cross-border transfer may, with the agreement of the recipient, restrict its liability to a foreign payment intermediary concerning other claims to an amount equivalent to 25 000 euro.

(6) The recipient's account manager may, with the agreement of the recipient, restrict its liability for damage caused by the non-execution of a transfer or a delay in the execution of a transfer to an amount equivalent to 12 500 euro.

(7) The restriction of liability provided in subsection (6) of this section does not apply with regard to the recipient's claim against the account manager for a penalty for late payment or if damage is caused by the intent or gross negligence of the account manager. Nor does the restriction of liability apply in the case where the account manager has, by a contract, assumed liability for risks related to the circumstances which resulted in the damage.

§ 732. Prohibition on violation of provisions

A person or institution provided by law may, pursuant to the procedure provided by law, demand that an account manager who has violated the provisions provided in this Division concerning transfers terminate the violation and avoid any such violation.

§ 733. Mandatory nature of provisions

Agreements entered into by the originator and the account manager thereof which derogate from the provisions of this Division to the prejudice of the originator, and agreements entered into by the recipient and the account manager thereof which derogate from the provisions of this Division to the prejudice of the beneficiary are void, unless:

1) the amount of the transfer exceeds the equivalent of 75 000 euro;

2) the funds are to be transferred to an account manager located outside Estonia and the European Union or from such an account manager;

3) the agreement is entered into with an account manager who is the originator or the recipient.

Division 3

Electronic Payment Instrument

§ 734. Electronic payment instrument

(1) An electronic payment instrument is a payment instrument which enables its holder to transfer money, make cash withdrawals from cash dispensing machines and perform other banking transactions via communications channels or by other electronic means,.

(2) Remote access payment instruments and electronic money instruments are electronic payment instruments.

§ 735. Remote access payment instrument

A remote access payment instrument enables its holder, without giving any written instructions, to access funds in an account opened in the name of the holder by an account manager, including for the purposes of performing transfers, and the use of a payment instrument usually requires a personal identification number or other similar proof of identity of the holder of the payment instrument. Remote access payment instruments include, among others, payment cards (both credit and debit cards) and also telephone and home banking applications to access funds in an account.

§ 736. Electronic money instrument

An electronic money instrument is a reloadable electronic payment instrument other than a remote access payment instrument, including a card or computer memory, on which mone-

tary units are stored electronically, enabling its holder to transfer money, withdraw cash and load or unload the money instrument using a cash dispensing machine or a self-service payment terminal.

§ 737. Issuer of payment instrument

The issuer of the payment instrument is a person who, in the course of the economic activities thereof, makes a payment instrument available to another person (the holder of the payment instrument) pursuant to a contract entered into with the person.

§ 738. Specifications for application of provisions

(1) The provisions of this Division do not apply to money transfers performed using an electronic payment instrument if the originator or recipient is a credit institution.

(2) The provisions of subsection 740 (1), § 742, clauses 744 (1) 3) and 4) and subsections 745 (1) and (2) of this Act do not apply to transactions performed using electronic money instrument. The provisions of this Division do, however, apply in their entirety in cases where an electronic money instrument is used to load the money instrument from the account of the holder of the payment instrument or to unload the money instrument to the account of the holder of the payment instrument.

(3) The provisions of this Division do not apply to payments by cheque.

(4) The provisions of this Division apply to contracts entered into in Estonia with holders of payment instruments whose place of residence or location is in Estonia or a Member State of the European Union, regardless of the state whose law is applied to the contract.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

§ 739. Requirements for contract on use of electronic payment instrument

(1) The issuer of an electronic payment instrument shall communicate the terms and conditions of the contract on use of the electronic payment instrument to the holder thereof, including informing the holder of the rights applicable to the contract, not later than upon the signing of the contract and before delivering the electronic payment instrument to the holder thereof.

(2) The terms and conditions of a contract on the issue and use of an electronic payment instrument shall be set out in a format which can be reproduced in writing and, if possible, by electronic means. The terms and conditions shall be in Estonian, worded in a manner which is easy to understand, and detailed.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) The terms and conditions of the contract on the issue and use of an electronic payment instrument shall include at least the following information:

1) information concerning the payment instrument, and the technical requirements with respect to the communication equipment necessary to use the payment instrument and the instructions for using the payment instrument, where reasonably required;

2) the financial limits imposed on the use of the payment instrument;

3) the obligations and liability of the holder and the issuer of a payment instrument, including a description of reasonable steps that the holder of the payment instrument should take to keep the electronic payment instrument safe and the means (such as a personal identification number or other code) which enable it to be used;

4) the due date on which or the term during which the account of the holder of the payment instrument will be debited or credited, or, if the holder of the payment instrument does not have an account with the issuer, the term during which the holder will be invoiced;

5) the types of charge payable by the holder of the payment instrument to the issuer thereof, including the size of any initial and annual charges, where applicable, any commission fees and charges payable for and the interest rates on transactions executed with the payment instrument, and the methods for the calculation thereof;

6) the term and procedure for the holder of the payment instrument to contest a transaction performed using the payment instrument and to claim potential compensation.

(4) If the electronic payment instrument is usable for transactions outside Estonia, the following information shall also be communicated to the holder thereof in addition to the provisions of subsection (3) of this section:

1) an indication of the rates of any fees and charges likely to be levied for foreign currency transactions;

2) the exchange rate used for converting foreign currency transactions and charges levied thereon, including the relevant date for determining such rate.

§ 740. Notification of holder of electronic payment instrument of transaction

(1) The issuer of an electronic payment instrument shall inform the holder thereof in a format which can be reproduced in writing and, if possible, by electronic means, of transactions performed using the electronic payment instrument. Information relating to the transactions performed using the electronic payment instrument shall be submitted at the agreed intervals or, at the request of the holder of the payment instrument, immediately. The information shall be detailed and shall set out at least the following information:

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

1) information enabling the holder of the payment instrument to identify the transaction

including, if possible, information relating to the person with which or at the location of which the transaction is performed;

2) the amount by which the account of the holder of the payment instrument is debited;

3) if the transaction is performed in foreign currency, the value of the transaction in the billing currency and the currency of Estonia, and also the exchange rate used for conversion;

4) the size of any fees and charges applied for transactions.

(2) The issuer of the electronic money instrument shall enable the holder thereof to verify the last five transactions performed with the money instrument and the remaining monetary units stored thereon.

§ 741. Obligations of holder of payment instrument

(1) The holder of an electronic payment instrument shall:

1) use the electronic payment instrument in accordance with the conditions governing the issue and use of a payment instrument, which includes taking all reasonable steps to keep the electronic payment instrument and the means which enable it to be used (such as a personal identification number or other code) safe;

2) notify without delay the issuer of the payment instrument or a third party indicated by the issuer to the holder for this purpose of the loss or theft of the electronic payment instrument or of the means which enable it to be used;

3) not record, in any easily recognisable form, the personal identification number or other code which enables the electronic payment instrument to be used, such as on the electronic payment instrument or on any item which he or she carries with the electronic payment instrument.

(2) The holder of a remote access payment instrument shall notify the person specified in clause (1) 2) of this section of any unauthorised transactions recorded in the account of the holder of the remote access payment instrument and of any errors or other irregularities hindering the operation of the account.

(3) The holder of an electronic payment instrument shall not withdraw an order which the holder has given by means of the electronic payment instrument, unless the amount was not determined when the order was given.

§ 742. Bearing of risk arising from use of payment instrument

(1) Upon the theft or loss of an electronic payment instrument, the holder thereof shall bear the risk arising from the theft or loss until the issuer thereof or the third party indicated

to the holder for such purpose is notified thereof and up to a limit which may not exceed the limit agreed upon with the issuer or, at most, an amount equivalent to 150 euro.

(2) The limit provided in subsection (1) of this section does not apply if the holder violates the obligations provided in subsection 741 (1) of this Act deliberately or due to extreme negligence or if the holder acts fraudulently.

(3) As soon as the holder of a payment instrument has notified the issuer or the person appointed by the issuer, except in cases where the holder acts fraudulently, he or she is not thereafter liable for the risk arising from the loss or theft of the electronic payment instrument.

(4) The holder of a payment instrument is not liable for the risk arising from a transaction performed using the electronic payment instrument if the payment instrument is used without actually being presented in physical form or identified electronically. The use of the personal identification number or any other similar proof of identity is not in itself sufficient to entail that the holder is liable.

(5) The provisions of subsection (4) of this section do not apply to transactions performed using telephone or home banking.

§ 743. Amendment of contract on use of payment instrument

The issuer of a payment instrument may amend the terms and conditions of the contract on the use of the electronic payment instrument if the issuer gives prior notice of the amendment to the holder of the payment instrument and grants the holder a reasonable term which shall not be less than one month, to cancel the contract. If the holder of the payment instrument does not cancel the contract within the specified term, it shall be deemed that the holder has agreed to the amendment.

§ 744. Obligations of issuer of payment instrument

(1) The issuer of a payment instrument shall:

1) not disclose the personal identification number or other code of a holder of a payment instrument to third parties;

2) not issue an electronic payment instrument without a corresponding request having been made, unless it is a replacement for an electronic payment instrument already held by the holder;

3) keep, for a reasonable period of time, information which enables the transactions performed using the electronic payment instrument to be traced and errors to be rectified;

4) prove, in the event of a dispute with the holder of the payment instrument, that a transaction performed using a remote access payment instrument was accurately recorded

and entered into the accounts and that a transaction performed using an electronic payment instrument was not affected by technical failure or other deficiency.

(2) The issuer of an electronic payment instrument or a person appointed by the issuer for this purpose shall enable the holder of the payment instrument to inform the issuer or person of the loss or theft of the payment instrument at any time. The issuer shall also guarantee the availability of the required means for the holder to be able to prove that the issuer or person has been notified.

(3) The issuer of a payment instrument or a person appointed by the issuer for this purpose shall, as of the receipt of the notification specified in subsection (2) of this section, take all reasonable and available measures to prevent any further use of the payment instrument, even in the case of fraud or extreme negligence on the part of the holder.

§ 745. Liability of issuer of payment instrument

(1) The issuer of a payment instrument is liable for:

1) failure to perform or inadequate performance of an order submitted by means of an electronic payment instrument which reaches the issuer thereof, even if the transaction is initiated at a machine or terminal or via technical means not under the issuer's direct control but which the issuer of the payment instrument has not prohibited the holder of the payment instrument from using;

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2) transactions performed using a payment instrument which were not authorised by the holder of the payment instrument, except in the case provided in § 742 of this Act where the holder of the payment instrument bears the risk arising from the theft or loss of the payment instrument;

3) any error or irregularity attributable to the issuer upon the maintenance of the holder's account.

(2) If the issuer of a payment instrument is liable pursuant to the provisions of subsection (1) of this section, the issuer shall compensate the holder of the payment instrument for the amount of the transaction not performed or performed inadequately and for any interest thereon, and, in the case of an unauthorised transaction, the issuer shall restore the holder to the position which existed before the unauthorised transaction was performed. This does not preclude or restrict the right of the holder of a payment instrument to claim compensation for damage which exceeds the amount specified above.

(3) The issuer of an electronic money instrument is liable for the loss of monetary units of the holder of the instrument which were stored on the instrument and for the inadequate performance of the holder's transactions if such loss or inadequate performance is attributable to a malfunction of the instrument, a machine, terminal or any other technical means authorised for use, provided that the malfunction was not caused knowingly by the holder and that the holder has not violated the provisions of clause 741 (1) 1) of this Act.

§ 746. Mandatory nature of provisions

Agreements which derogate from the provisions of this Division to the prejudice of the holder of an electronic payment device are void.

Division 4

Settlement by Letter of Credit

§ 747. Definition of settlement by letter of credit

In the case of settlement by a letter of credit, the issuing bank undertakes, on the order of the originator or on the initiative of the issuing bank, to make a payment for the benefit of the beneficiary and in accordance with the terms and conditions of the letter of credit, primarily upon submission of the required documents, or to accept and cash a draft of a third party or to perform any other obligation or to authorise another account manager (advising bank) therefor. The issuing bank may also be the advising bank.

§ 748. Irrevocability of letter of credit

(1) An irrevocable letter of credit is a letter of credit which cannot be amended or cancelled without the authorisation of the issuing bank or the beneficiary. The irrevocable character of a letter of credit is presumed.

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(2) At the request of the originator or the issuing bank, the advising bank may confirm the irrevocable letter of credit (confirming bank). By confirming a letter of credit, the confirming bank shall, in addition to the issuing bank, assume an obligation to execute the letter of credit in accordance with the terms and conditions thereof. An irrevocable letter of credit shall not be modified or cancelled without the authorisation of the confirming bank.

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§ 749. Performance of letter of credit

(1) The issuing or confirming bank shall perform the letter of credit if the beneficiary submits all the documents to the bank in accordance with the terms and conditions of the letter of credit.

(2) The obligation of the bank to perform a letter of credit shall not depend on the mutual relationship between the originator and the beneficiary.

§ 750. Refusal to accept documents

(1) The issuing bank or the confirming bank shall, with professional diligence, review all the documents submitted to the bank and verify that they are in accordance with the terms and conditions of the letter of credit.

(2) The issuing bank shall notify the applicant of refusal to accept documents.

§ 751. Liability of bank for violation of terms and conditions of letter of credit

(1) The issuing bank shall not be liable for failure to observe or unsatisfactory observance of the instructions given to other banks related to the performance of the given letter of credit.

(2) In the case of failure to perform a letter of credit without good reason, the issuing bank or the confirming bank shall be liable to the beneficiary.

(3) If the confirming bank has performed the letter of credit, the issuing bank shall compensate the confirming bank for the amount paid.

(4) If the advising bank performs a letter of credit on the basis of documents accepted by the advising bank which fail to comply with the terms and conditions of the letter of credit, the issuing bank has the right to request that the advising bank return the amount paid in breach of the terms and conditions of the letter of credit to the beneficiary or to refuse to compensate for the amount paid.

§ 752. Costs of settlement by letter of credit

(1) The issuing bank shall be liable for the reimbursement of all expenses related to a letter of credit it issued which are incurred by other banks.

(2) The originator shall be liable for the reimbursement of all expenses related to a letter of credit which are incurred by banks.

§ 753. Expiry of letter of credit

(1) A letter of credit expires upon:

1) performance of the letter of credit;

2) expiry of the term of the letter of credit;

3) cancellation of the letter of credit.

(2) If the beneficiary waives a letter of credit and notifies the advising bank thereof, the advising bank shall notify the issuing bank thereof.

Division 5

Settlement by Collection

§ 754. Definition of settlement by collection

(1) In the case of settlement by collection, a bank (the remitting bank) shall, on the instruction, at the expense and for the benefit of the drawer, act as an intermediary in the collection of a particular payment from a third party (the drawee). The objective of collection may also be the acceptance of any other collection or payment obligation.

(2) The remitting bank is entitled to involve another bank (a collecting bank) for the execution of a collection instruction.

(3) In the case of failure to execute the or unsatisfactory performance of the instruction of the drawer, the bank which has failed to execute the collection instruction shall be liable to the drawer therefor.

§ 755. Execution of collection instruction

(1) Upon execution of a collection instruction, the banks shall be governed by the collection instruction and act with professional diligence.

(2) If the titles and numbers of the documents listed in the collection instruction and those sent for collection do not correspond, the collecting bank shall immediately notify the drawer or the bank which issued the collection instruction.

(3) Documents shall be delivered to the drawee in the form which they were received, except for the notes and inscriptions of banks which are necessary to execute collection actions.

(4) The collecting bank shall immediately transfer the amounts paid by the drawee to the drawer or to the bank which issued the collection instruction.

(5) The bank shall be liable for damage caused by the loss, damage or destruction of a document in its possession.

§ 756. Notification obligation

(1) The collecting bank shall immediately notify the remitting bank of any failure to receive payment or acceptance, and the remitting bank shall immediately notify the drawer and ask for further instructions.

(2) If the drawer fails to give instructions within a period of time considered as normal in banking or, in the absence thereof, within a reasonable period of time, the collecting bank may return the documents to the remitting bank.

§ 757. Liability

(1) The drawer shall be liable for the reimbursement of all expenses incurred by banks related to collection.

(2) Banks shall not be liable for failure to execute collection instructions issued to other banks or for failure to perform the obligations of the drawee.

Chapter 41

Contract for Provision of Health Care Services

§ 758. Definition of contract for provision of health care services

(1) By a contract for the provision of health care services, one person (the provider of health care services) undertakes, in the professional activities thereof, to provide health care services to another person (the patient), particularly by examining the patient in the interests of his or her health and observing the rules of medicine, by consulting and treating the patient or offering obstetrical care to the patient, and by informing the patient of his or her state of health and the progress and results of his or her treatment. The provision of health care services also includes patient care within the framework of the provision of health care services and other activities directly related to the provision of health care services.

(2) Qualified doctors and dentists, and nurses or midwives providing health care services independently, who participate in the provision of health care services and operate on the basis of an employment contract or other similar contract entered into with a provider of health care services shall also be personally liable besides the provider of health care services for performance of a contract for the provision of health care services.

§ 759. Specifications for entry into contract

A contract for the provision of health care services is also, inter alia, deemed to have been entered into upon commencement of the provision of health care services or assumption of the obligation to provide health care services with the consent of a patient, and also if commencement of the provision of health care services to a patient without the capacity to exercise his or her will corresponds to his or her actual or presumed intention.

§ 760. Duty to enter into contract

A provider of health care services is required to provide health care services to a person who applies therefor unless the terms or conditions of the contract applied for are in conflict with provisions of law or the standard terms of a contract for the provision of health care services.

§ 761. Duty to pay fee

An established, agreed or standard fee or, in the absence thereof, a reasonable fee shall be paid for the provision of health care services. A fee may be demanded from a patient in so far as the expenses for providing health care services are not covered by sickness insurance or another person.

§ 762. Provision of health care services

Health care services shall at the very least conform to the general level of medical science at the time the services are provided and the services shall be provided with the care which can normally be expected of providers of health care services. If necessary, a provider of health care services shall refer a patient to a specialist or involve a specialist in the treatment of the patient.

§ 763. Use of generally unrecognised methods upon provision of health care services

(1) A method of prevention, diagnosis or treatment which is not generally recognised may be used only if conventional methods are not likely to be as effective, if the patient is informed of the nature and possible consequences of the method and if the patient has granted his or her consent to the use of the method.

(2) The legal representative of a patient with restricted active legal capacity shall grant the consent specified in subsection (1) of this section in the place of the patient. A generally unrecognised method may be used in respect of a patient without the capacity to exercise his or her will without the consent of the patient or his or her legal representative if failure to use the method would put the life of the patient at risk or would significantly damage his or her health.

§ 764. Duty of patient to provide information

A patient shall inform the provider of health care services of all circumstances which, according to his or her best understanding, are necessary for the provision of health care services and shall provide any assistance which the provider of health care services requires to perform the contract.

§ 765. Provision of health care services in presence of other person

The presence of another person during the provision of health care services is permitted only with the consent of the patient unless it is impossible to provide the health care services without the presence of the other person, it is impossible to obtain the consent of the patient and failure to provide the health care services would significantly damage the health of the patient.

§ 766. Duty to inform patient and obtain his or her consent

(1) The provider of health care services shall inform the patient of the results of examination of the patient, the state of his or her health, any possible illnesses and the development thereof, the nature and purpose of the health care services provided, the risks and consequences associated with the provision of such health care services and of other available and necessary health care services. At the request of the patient, the provider of health care services shall submit the specified information in a format which can be reproduced in writing.

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(2) As a rule, a provider of health care services shall not promise that a patient will recover or that an operation will be successful.

(3) A patient may be examined and health care services may be provided to him or her only with his or her consent. A patient may withdraw his or her consent within a reasonable period of time after granting consent. At the request of a provider of health care services, such consent or an application to withdraw such consent shall be in a format which can be reproduced in writing.

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(4) In the case of a patient with restricted active legal capacity, the legal representative of the patient has the rights specified in subsections (1) and (3) of this section in so far as the patient is unable to consider the pros and cons responsibly. If the decision of the legal representative appears to damage the interests of the patient, the provider of health care services shall not comply with the decision. The patient shall be informed of the circumstances and information specified in subsection (1) of this section to a reasonable extent.

(5) A provider of health care services shall not disclose information specified in subsection (1) of this section to a patient if the patient refuses to be given such information and if his or her legitimate interests or the legitimate interests of other persons are not damaged thereby.

(6) In the cases and to the extent provided by law, the consent of a patient or his or her legal representative is not required for the provision of health care services.

§ 767. Provision of health care services to patients without capacity to exercise their will

(1) If a patient is unconscious or incapable of exercising his or her will for any other reason (a patient without the capacity to exercise his or her will) and if he or she does not have a legal representative or his or her legal representative cannot be reached, the provision of health care services is permitted without the consent of the patient if this is in the interests of the patient and corresponds to the intentions expressed by him or her earlier or to his or her presumed intentions and if failure to provide health care services promptly would put the life of the patient at risk or significantly damage his or her health. The intentions expressed earlier by a patient or his or her presumed intentions shall, if possible, be ascertained using the help of his or her immediate family. The immediate family of the patient shall be informed of his or her state of health, the provision of health care services and the associated risks if this is possible in the circumstances.

(2) Within the meaning of this Chapter, immediate family means the spouse, parents, children, sisters and brothers of the patient. Other persons who are close to the patient may also be deemed to be immediate family if this can be concluded from the way of life of the patient.

§ 768. Duty to maintain confidentiality

(1) Providers of health care services and persons participating in the provision of health care services shall maintain the confidentiality of information regarding the identity of patients and their state of health which has become known to them in the course of providing health care services or performing their official duties and they shall ensure that the information contained in documents specified in § 769 of this Act does not become known to other persons unless otherwise prescribed by law or by agreement with the patient.

(2) It is permitted to deviate from the duty provided for in subsection (1) of this section to a reasonable extent if failure to disclose the information could result in the patient significantly damaging himself or herself or other persons.

§ 769. Duty to document

A provider of health care services shall document the provision of health care services to each patient pursuant to the requirements and shall preserve the corresponding documents. The patient has the right to examine these documents and to obtain copies thereof at his or

her own expense, unless otherwise provided by law.

§ 770. Liability of providers of health care services

(1) Providers of health care services and persons specified in subsection 758 (2) of this Act shall be liable only for the wrongful violation of their own obligations, particularly for errors in diagnosis and treatment and for violation of the obligation to inform patients and obtain their consent.

(2) Providers of health care services shall also be liable for the activities of persons assisting them and for any defects in the equipment used upon provision of health care services.

(3) The burden of proof regarding circumstances which are the bases for the liability of the provider of health care services and of a person specified in subsection 758 (2) of this Act shall lie with the patient unless the provision of health care services to the patient is not documented as required.

(4) If there is an error in diagnosis or treatment and a patient develops a health disorder which could probably have been avoided by ordinary treatment, the damage is presumed to have resulted from the error. In this case, the burden of proof regarding the damage resulting from the health disorder shall also lie with the patient.

§ 771. Limitation period

The limitation period for a claim of a patient concerning compensation for damage is five years as of the time when the patient becomes aware that a provider of health care services or a doctor has violated an obligation or caused damage.

§ 772. Specifications for expiry of contract

(1) A contract for the provision of health care services shall, inter alia, expire:

1) upon the death of one party;

2) upon termination of the provision of health care services;

3) if another provider of health care services assumes the provision of health care services.

(2) A patient may cancel a contract for the provision of health care services at any time without giving a reason.

(3) A provider of health care services may cancel a contract only with a good reason

due to which the provider of health care services cannot, taking into account all the circumstances, be expected to continue providing the health care services. If necessary, the provider of health care services shall continue to provide health care services until the patient is able to receive the health care services elsewhere.

§ 773. Mandatory nature of provisions

Any agreements which derogate from the provisions of this Chapter to the detriment of a patient are void.

Chapter 42

Contract of Carriage

Division 1

Contract for Carriage of Goods

Subdivision 1

General Provisions

§ 774. Definition of contract for carriage of goods

(1) By a contract for the carriage of goods, one person (the carrier) undertakes to carry movables (goods) for another person (the sender) to a destination and to deliver the goods to a third party (the consignee). The sender undertakes to pay a charge therefor (a carriage charge) to the carrier.

(2) The provisions concerning contracting for services apply to contracts for the carriage of goods unless otherwise provided for in this Division.

(3) The provisions of this Division do not apply to the carriage of goods by sea.

§ 775. Consignment note

(1) The carrier may demand that the sender issue a consignment note containing the following information:

1) the place and date of issue of the consignment note;

2) the name and address of the sender;

3) the name and address of the carrier;

4) the place and the date of taking over of the goods by the carrier;

5) the name and address of the consignee, and a contact address of the consignee for the carrier;

6) the place set out for the consignee for the goods to be delivered;

7) a description of the nature of the goods and the method of packing, and, in the case of dangerous goods, markings pursuant to the requirements established for such goods or, in the absence of such requirements, their generally recognised description;

8) the number of packages and their special marks and numbers;

9) the gross weight of the goods or their quantity expressed in other units of measurement;

10) the agreed carriage charge, demurrage charge and expenses subject to reimbursement, and the notation concerning payment of the charges;

11) the "cash on delivery" charge if so agreed;

12) instructions for the customs clearance of the goods and other formalities related to the goods if such clearance or formalities are required;

13) an agreement on the type of carriage, including in open unsheeted vehicles or on deck.

(2) If the parties so agree, a consignment note may contain information not specified in subsection (1) of this section.

(3) A sender shall issue and sign a consignment note in three original copies, of which one shall be retained by the sender, one shall accompany the goods and one shall be handed to the carrier. At the request of the sender, the carrier shall sign the consignment note. The signatures may be replaced by a clip-mark.

§ 776. Conclusive force of consignment note

(1) A consignment note signed by the sender and the carrier shall be *prima facie* evidence of entry into the contract of carriage, the conditions of the contract and the receipt of the goods by the carrier.

(2) Upon the existence of a consignment note signed by the sender and the carrier, it is

presumed that the goods and their packaging appeared to be in good condition when the carrier took them over and that the number of packages, their marks and numbers corresponded with the information set out in the consignment note.

(3) A carrier may enter a reasoned notation in a consignment note (reservation) concerning the checking of the accuracy of the information set out in the consignment note. In this case, the provisions of subsection (2) of this section do not apply. The carrier may justify the reservation if, amongst other things, the carrier does not have reasonable means of checking the accuracy of the information set out in the consignment note.

(4) The carrier shall check the gross weight, quantity or content of the goods if so requested by the sender and if the carrier has reasonable means of checking. The carrier may demand that the sender reimburse any reasonable expenses incurred in relation to the checking.

(5) If the carrier has checked the gross weight, quantity or content of the goods and the results have been entered in the consignment note signed by both parties, it is presumed that the gross weight, quantity and content of the goods correspond to the information in the consignment note.

§ 777. Dangerous goods

(1) Upon the carriage of dangerous goods, the sender shall inform the carrier of the exact nature of the danger and, if necessary, the precautions to be taken in good time and in a format which can be reproduced in writing.

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(2) If, upon the delivery of goods, the carrier is not informed that the goods are of a dangerous nature and the carrier is unaware of this fact, the carrier may unload the dangerous goods, place them in storage, transport them back or, if necessary, destroy the goods or render them harmless. The carrier is not required to compensate the sender for any damage arising therefrom.

(3) The carrier may demand that the sender reimburse the necessary expenses incurred in relation to the application of precautions specified in subsection (2) of this section.

§ 778. Packing and marking of goods

(1) Taking into account the nature of the goods and the agreed type of carriage, the sender shall pack the goods such that they are protected against loss and damage and do not cause damage to the carrier.

(2) The sender shall mark the goods if this is necessary in order to enable the carrier to carry the goods pursuant to the contract.

§ 779. Loading

(1) The sender shall load and place goods in a manner which is secure for carriage (loading). It is presumed that the sender will also unload the goods.

(2) The carrier shall ensure that the conditions exist for the safe loading and unloading of goods.

(3) The carrier may demand separate compensation (a demurrage charge) for the period of time when the goods are being loaded or unloaded only if so agreed or if the period of time for loading or unloading exceeds the period of time reasonably necessary therefor due to circumstances independent of the carrier.

§ 780. Accompanying documents

(1) Before delivery of the goods to the carrier, the sender shall place the documents which are necessary in order for customs clearance or other formalities to be conducted (accompanying documents) at the disposal of the carrier and shall also provide the carrier with information which is necessary therefor.

(2) The carrier shall compensate for any damage caused by the loss of or damage to the accompanying documents delivered to the carrier or by the incorrect use of these documents unless the loss of, damage to or incorrect use of the documents is caused by circumstances the occurrence or consequences of which could not have been avoided by the carrier. The liability of the carrier shall be limited to the sum of money payable thereby upon loss of the goods.

§ 781. Liability of sender

(1) The sender shall compensate the carrier for any damage caused and reimburse any expenses incurred due to:

1) insufficient packing or marking of the goods;

2) inaccurate or incomplete information in the consignment note;

3) failure to give notification of the danger related to dangerous goods, or giving notification which is incorrect or insufficient;

4) unsatisfactory loading of goods;

5) the absence, incompleteness or incorrectness of accompanying documents or information specified in subsection 780 (1) of this Act.

(2) The sender shall be liable in the cases specified in subsection (1) of this section, regardless of whether the violation of obligations by the sender is justifiable. If the sender is a consumer, the sender shall be liable in the cases specified in subsection (1) of this section only if the sender is culpable of violating an obligation.

§ 782. Cancellation of contract of carriage by sender

(1) The sender may cancel the contract of carriage at any time.

(2) If the sender cancels the contract of carriage without a fundamental breach of the contract on the part of the carrier, the carrier may demand payment of the carriage charge and demurrage charge and reimbursement of the expenses subject to compensation from which the amounts which the carrier saved, obtained or could have obtained due to termination of the contract are deducted.

(3) Instead of the claim provided for in subsection (2) of this section, the carrier may demand payment of one third of the agreed carriage charge.

(4) If the goods have already been loaded before cancellation of the contract, the carrier may demand instructions from the sender regarding further operations with the goods or the prompt unloading of the goods. If the carrier does not receive any instructions within a reasonable period of time, the carrier may take the measures specified in clauses 786 (4) 1)-4) of this Act at the expense of the sender.

(5) If, in the case specified in subsection (4) of this section, the sender gives instructions to unload the goods, the carrier is required to unload the goods only if this is possible without damaging the economic activities of the carrier and goods of other senders or consignees.

(6) If the sender cancels the contract due to a breach of the contract by the carrier, the carrier shall promptly unload the goods at the expense of the carrier.

§ 783. Partial load

(1) If only a part of the agreed load is loaded, the sender may demand at any time that the carrier commence carriage of the loaded goods.

(2) In the case specified in subsection (1) of this section, the carrier may demand payment of the full carriage charge and demurrage charge and the reimbursement of expenses related to the fact that the load is only a partial load. However, a carriage charge for goods which are carried by the carrier instead of the unloaded part of the load and using the same means of transport shall be deducted from the carriage charge.

(3) In the case specified in subsection (1) of this section, the carrier may demand additional security for the carriage charge, demurrage charge and expenses subject to reimbursement if the payment thereof is not sufficiently secured with the right of security and

other security specified in § 803 of this Act due to the fact that the load is only a partial load.

(4) If the fact that only a part of the full load is loaded is caused by circumstances dependent on the carrier, the carrier may only demand payment of the carriage charge in respect of the proportion of the load which is actually carried.

§ 784. Rights of carrier in event of exceeding reasonable time limit for loading

(1) If the sender fails to load goods within a reasonable time limit for loading or if the sender is not required to load the goods and fails to deliver the goods to the carrier within a reasonable time limit, the carrier may grant the sender an additional reasonable term to load or deliver the goods and shall notify the sender that the carrier will not wait for the goods to be loaded or delivered after expiry of the term.

(2) If the goods are not loaded or are not delivered to the carrier within the additional term provided for in subsection (1) of this section, the carrier may cancel the contract and submit the claims specified in subsections 782 (2) and (3) of this Act.

(3) If only a part of the load has been loaded or delivered to the carrier by the end of the additional term provided for in subsection (1) of this section, the carrier may commence carriage of the partial load and submit the claims specified in subsections 783 (2) and (3) of this Act.

(4) The carrier does not have the rights specified in subsections (1)-(3) of this section if the reasonable time limit for loading is exceeded due to circumstances dependent on the carrier.

§ 785. Instructions regarding goods

(1) The sender of goods has the right to give instructions regarding operations with the goods also after entry into the contract of carriage. The sender may in particular give instructions that the carrier should not carry the goods any further or that the carrier should transport the goods to another destination or another place of delivery or to another consignee.

(2) The carrier shall carry out any instructions specified in subsection (1) of this section only in so far as carrying out the instructions will not bring about harmful consequences for the economic activities of the carrier or for the senders or consignees of other goods carried by the carrier. The carrier may demand that the sender reimburse the expenses related to carrying out such instructions and pay an additional reasonable carriage charge. The carrier may demand a reasonable advance payment in order to carry out the instructions.

(3) If the consignment note signed by the sender and the carrier sets out that instructions regarding the goods may be given only if the first copy of the consignment note is produced, the carrier may carry out the instructions only if the first copy of the consignment note is submitted to the carrier.

(4) Upon arrival of the goods at the place of delivery or upon the handing over of the copy of the consignment note specified in subsection (3) of this section to the consignee, the right to give instructions regarding the goods transfers to the consignee.

(5) If the consignee, pursuant to the provisions of subsection (4) of this section, instructs the carrier to transport the goods to another person, this person does not have the right to designate a new consignee in turn.

(6) The carrier shall promptly notify the person who gives instructions to the carrier of any failure to carry out the instructions.

(7) If instructions are given by a person who is not entitled to do so and if the obligation to carry out the instructions is dependent on the first copy of the consignment note being produced but the carrier carries out the instructions without having received the first copy of the consignment note, the carrier shall compensate the person entitled to give instructions for any damage arising therefrom even if the damage caused is justifiable. In such case, the provisions concerning restrictions on the liability of the carrier do not apply.

(8) Any agreement which precludes or restricts the obligation of a carrier to compensate for damage caused to a person entitled to give instructions in the case specified in subsection (7) of this section does not apply to the person who receives the first copy of the consignment note.

§ 786. Circumstances preventing carriage or delivery

(1) If it becomes evident before the goods arrive at the place designated for delivery that carriage cannot be completed as prescribed in the contract or if it becomes evident after the goods arrive at the place designated for delivery that the goods cannot be delivered, the carrier shall ask the person entitled to give instructions for instructions regarding further operations with the goods. If the consignee is entitled to give instructions but the consignee cannot be identified or if the consignee refuses to accept the goods, the sender may give instructions without being obliged to produce the first copy of the consignment note.

(2) If circumstances preventing carriage or delivery arise after the consignee gives instructions to transport goods to another person, the consignee has the rights of a sender specified in subsection (1) of this section and the other person has the rights of the consignee.

(3) The carrier may demand reimbursement of any expenses related to carrying out instructions specified in subsection (1) of this section and payment of a reasonable carriage charge, unless the circumstances preventing carriage or delivery arise due to circumstances dependent on the carrier. The carrier may demand a reasonable advance payment for carrying out the instructions.

(4) If circumstances preventing carriage or delivery arise and the carrier does not receive instructions within a reasonable period of time or if the carrier may refuse to carry out the instructions pursuant to the provisions of subsection 785 (2) of this Act, the carrier shall take reasonable measures in the interests of the person entitled to give instructions. According to the circumstances, the carrier may, in particular:

1) unload and store the goods, or entrust the goods to a third party at the expense of the person entitled to give instructions regarding the goods in which case the carrier shall be liable only for the choice of the third party;

2) transport the goods back;

3) sell the goods pursuant to the provisions of subsections 125 (3)-(6) of this Act if the goods are highly perishable or if their condition warrants such a course or if in the event of taking other measures, the expenses incurred would be out of proportion to the value of the goods;

4) destroy the goods if they are unfit for sale.

(5) Upon the taking of measures specified in subsection (4) of this section, the obligations of the carrier arising from the contract shall terminate.

(6) The carrier may demand reimbursement of the expenses which it is necessary to incur in relation to measures specified in subsection (4) of this section being taken and may demand payment of a reasonable charge, unless the circumstances preventing carriage or delivery arise due to circumstances dependent on the carrier.

§ 787. Payment of charges

(1) A carriage charge and a demurrage charge shall be paid to the carrier upon delivery of the goods to the consignee. In addition to the carriage charge and demurrage charge, the carrier may demand reimbursement of the expenses which the carrier incurred in relation to the goods and which the carrier might have considered reasonably necessary according to the circumstances. The carrier shall not demand the reimbursement of such expenses which normally arise upon performance of a contract of carriage or which the carrier would also have incurred without entering into the contract of carriage.

(2) If carriage cannot be completed as prescribed in the contract due to circumstances preventing carriage or delivery, the carrier may demand payment of a carriage charge and reimbursement of expenses which correspond to the distance covered. If the circumstances preventing carriage or delivery arise due to circumstances dependent on the carrier, the carrier may demand payment of the carriage charge and reimbursement of expenses only in so far as the sender is interested in the carriage.

(3) If the size of the carriage charge is agreed based on the number or weight of goods or on the quantity of goods in any other way, it is presumed upon calculation of the carriage charge that the information in the consignment note or bill of lading is correct. This also applies if the carrier has made a reservation in respect of such information which the carrier then justifies by claiming that the carrier did not have any reasonable means to verify the correctness of the information.

§ 788. Rights of consignee and obligation of consignee to pay

(1) After arrival of the goods at the place of delivery, the consignee may demand that the carrier deliver the goods in exchange for performance of the obligations arising from the contract of carriage.

(2) A consignee who submits a claim specified in subsection (1) of this section shall pay the following to the carrier:

1) the carriage charge due up to the amount set out in the consignment note or

2) the carriage charge agreed with the consignee or

3) the carriage charge agreed with the sender to the extent where it does not exceed a reasonable carriage charge for the carriage, if the consignment note is not issued or is not presented to the consignee or if the consignment note does not set out the size of the carriage charge.

(3) In the case specified in subsection (1) of this section, the consignee, in addition to the carriage charge, is required to pay the carrier a demurrage charge for exceeding the time limit for loading or unloading if the consignee is informed of the size of the demurrage charge due upon delivery of the goods.

(4) In the event of damage to, a delay in the delivery of or the loss of the goods, the consignee may submit claims arising from the contract of carriage in the name of the consignee and against the carrier, and the sender shall also retain the right to make such claims.

(5) The provisions of subsections (1)-(4) of this section do not preclude or limit the sender's obligations to the carrier arising from the contract of carriage.

§ 789. "Cash on delivery" charge

(1) If the parties to a contract of carriage have agreed that the goods are to be delivered to the consignee only against payment of a "cash on delivery" charge, the "cash on delivery" charge is presumed to be subject to immediate payment.

(2) If the parties agree that the goods are to be delivered to the consignee only against payment of a "cash on delivery" charge but the carrier delivers the goods to the consignee without collecting the "cash on delivery" charge, the carrier shall compensate the sender for any damage arising therefrom to the extent of the "cash on delivery" charge. Damage shall also be compensated for if violation by the carrier of the obligation to collect the "cash on delivery" charge is justifiable.

(3) Any "cash on delivery" charge which is received is not part of the bankruptcy estate of a carrier and the obligees of the carrier cannot make a claim for payment thereon against the carrier in execution proceedings.

§ 790. Time limit for carriage

The carrier shall deliver the goods within the agreed time limit or, in the absence of an agreement, within a time limit which can be reasonably expected of a diligent carrier having regard to the circumstances of the case (time limit).

§ 791. Loss and recovery of goods

(1) The consignee or sender may treat the goods as lost if the goods are not delivered within the time limit or within a subsequent period of time of equal duration, but not within less than four days or, in the case of international carriage, thirty days.

(2) If a time limit is not agreed upon, the consignee or sender may treat the goods as lost if the goods are not delivered within sixty days as of delivery of the goods to the carrier.

(3) If the consignee or sender receives compensation from the carrier for the loss of the goods, the consignee or sender may, upon receipt of the compensation, demand to be notified immediately by the carrier should the goods be recovered.

(4) Within one month after receipt of a notice concerning recovery of the goods, the consignee or sender may demand the goods to be delivered thereto against refund of the compensation. If, in addition to compensation for the value of the goods, the compensation also includes the expenses related to the carriage of the loss of the goods, such expenses shall be deducted from the compensation to be refunded.

(5) The provisions of subsection (4) of this section do not preclude or restrict submission of a claim against a carrier for compensation for damage caused by exceeding a time limit.

(6) If the goods are recovered after compensation has been paid and the consignee or sender did not demand notification of recovery or does not submit a claim after receipt of the notice, the carrier may deal with the goods at the discretion thereof.

§ 792. Liability for loss of or damage to goods or for exceeding time limit

(1) The carrier shall be liable for any damage caused by exceeding the time limit and for any damage caused due to the loss of or damage to the goods between the time the goods are accepted for carriage and the time they are delivered.

(2) If the behaviour of the consignee or sender or the specific defects of the goods contribute to damage being caused, the obligation to compensate and the amount of compensation shall depend on the extent to which these circumstances contribute to the damage being caused.

§ 793. Release from liability

(1) The carrier shall not be liable for damage which is caused due to loss of or damage to the goods or a time limit being exceeded if the loss or damage is caused or the time limit is exceeded due to *force majeure*. The carrier shall not be released from liability by reason of the defective condition of the vehicle used for the carriage unless the sender provided the carrier with the vehicle.

(2) The carrier shall not be liable for the loss of or damage to the goods or for exceeding a time limit when this arises from the special risks inherent in one or more of the following circumstances:

1) use of open unsheeted vehicles when their use has been expressly agreed;

2) the lack of or defective condition of packing of the goods by the sender;

3) loading or unloading of the goods, and other operations with the goods by the sender or consignee and the giving of instructions regarding operations with the goods;

4) the nature of the goods which particularly exposes them to loss or damage, especially through breakage, functional failure, rust, decay, desiccation, leakage or normal wastage;

5) insufficiency or inadequacy of marks or numbers on the packages;

6) the carriage of livestock.

(3) If the carrier establishes that one of the circumstances specified in subsection (2) of this section has occurred and that the damage could be attributed to the circumstance, it is presumed that the damage has been caused by the circumstance. This does not apply in the event of the circumstance specified in clause (2) 1) of this section if the damage is unusually large or a package of goods has been lost.

(4) If, pursuant to the contract of carriage, the carrier is required to protect the goods from the effects of heat, cold, humidity and shaking and from other effects, the carrier is only entitled to claim the benefit of clause (2) 4) of this section if the carrier proves that all steps incumbent on the carrier in the circumstances, in particular with respect to the choice, maintenance and use of such equipment, were taken and that the carrier carried out any instructions issued thereto for the protection of the goods.

(5) The carrier shall only be entitled to claim the benefit of clause (2) 6) of this section if the carrier proves that all steps incumbent on the carrier in the circumstances were taken and that the carrier carried out any instructions issued thereto regarding operations with the goods.

§ 794. Compensation for value of goods

(1) In the event of the total or partial loss of the goods, the carrier shall compensate for

the value of the totally or partially lost goods. The value of the goods at the place and time at which they are accepted for carriage is deemed to be the value of goods.

(2) In the event of damage to the goods, the carrier shall compensate for the difference between the value of the goods in their undamaged and damaged form. The value of undamaged goods at the place and time at which they are accepted for carriage is deemed to be the value of undamaged goods. The value which goods would have had at the place and time at which they were to be accepted for carriage is deemed to be the value of damaged goods.

(3) In the event of the loss of or damage to the goods, the carrier shall also bear the expenses related to determining the damage.

(4) If the goods are sold directly before being accepted for carriage, the purchase price from which the costs of carriage are deducted is deemed to be the value of the goods.

(5) Compensation for damage other than that specified in subsections (1)-(4) of this section shall not be demanded from the carrier upon loss of or damage to the goods.

§ 795. Limitation of liability

(1) Compensation payable pursuant to § 794 of this Act for the total or partial loss of or damage to goods is limited to 8.33 SDRs (Special Drawing Rights) per kilogram of gross weight of the totally or partially lost or damaged goods.

(2) If, due to the loss of or damage to single packages, all the goods or part of the goods have become worthless, the limitation of liability of the carrier shall be calculated on the basis of the gross weight of all the goods or those goods which have become worthless.

(3) The Special Drawing Right (SDR) shall be converted into Estonian kroons according to the value of the Estonian kroon in terms of SDRs on the date on which the goods are accepted for carriage or on any other date agreed by the parties. The value of the Estonian kroon in terms of SDRs shall be calculated pursuant to the method of calculation used by the International Monetary Fund for its operations and procedures on the same date.

(4) The liability of the carrier for exceeding a time limit shall be limited to three times the carriage charge.

§ 796. Compensation for other expenses

(1) If the carrier is liable for the loss of or damage to the goods, the carrier shall, in addition to compensation payable pursuant to § 794 of this Act, also compensate for the carriage charge and demurrage charge already paid and for other charges and fees paid to the carrier. In the event of damage to the goods, the extent of the obligation to compensate shall be determined on the basis of the proportion of the value of the undamaged and damaged goods calculated pursuant to subsection 794 (2) of this Act.

(2) A carrier need not compensate for expenses not specified in subsection (1) of this section.

§ 797. Claims not arising from contract

(1) The limitations on the liability of the carrier prescribed in this Division also apply to the claims of the sender or consignee against the carrier arising from loss of or damage to the goods or from a time limit being exceeded if these claims do not arise from the contract of carriage, and particularly to claims arising from the causing of unlawful damage, *negotiorum gestio* and unjustified enrichment.

(2) The provisions of subsection (1) of this section do not apply to the claims of a third party arising from loss of or damage to the goods if the third party to whom the carried goods belong did not agree to the carriage and the carrier knew or should have known that the sender did not have the right to send the goods.

§ 798. Non-applicability of limitations on liability

The limitations on liability provided for in this Division do not apply if the carrier causes damage intentionally or through gross negligence.

§ 799. Liability of employee

If a claim arising from loss of or damage to goods or a time limit being exceeded is submitted against an employee of a carrier or against another person for whom the carrier is responsible, the employee or other person may also rely on the limitations on liability prescribed in this Division and the contract of carriage unless the damage is caused by the employee or other person intentionally or through gross negligence.

§ 800. Liability of carrier and actual carrier

(1) If the goods are wholly or partially carried by another person (the actual carrier), the actual carrier shall be liable for any damage caused by loss of or damage to the goods or a time limit being exceeded in the same manner as the carrier if the damage is caused during a period when the goods are being carried by the actual carrier. An agreement between the carrier and the sender or consignee regarding extension of the liability of the carrier applies to the actual carrier only if the actual carrier has agreed thereto in a format which can be reproduced in writing.

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(2) The actual carrier may present the same objections against a claim submitted

against the actual carrier as may be presented by the carrier.

(3) The carrier and the actual carrier shall be liable as solidary obligors.

(4) If a claim is submitted against an employee of the actual carrier or against another person for whom the actual carrier is responsible, the provisions of § 799 of this Act also apply to them.

§ 801. Notification of damage

(1) If damage to or the partial loss of the goods is apparent upon external inspection but the consignee accepts the goods and the consignee or sender fails to notify the carrier of the loss of or damage to the goods upon delivery of the goods to the consignee at the latest, the goods are deemed to have been delivered in a condition prescribed in the contract.

(2) If, upon their delivery, the damage to or partial loss of the goods is not apparent to the consignee of the goods upon external inspection, the goods are deemed to have been delivered in a condition prescribed in the contract if the consignee or sender fails to notify the carrier of the loss or damage within seven days as of the delivery of the goods to the consignee.

(3) If the consignee or sender notifies the carrier of the loss of or damage to the goods, the consignee or sender shall provide a general description of the extent of the loss or damage.

(4) A claim arising from a time limit being exceeded shall not be submitted if the consignee fails to notify the carrier of the time limit having been exceeded within twenty-one days as of the delivery of the goods to the consignee.

(5) If a notice is submitted upon delivery of the goods, it may be submitted in any form. If the notice is submitted after delivery of the goods, it shall be submitted in a format which can be reproduced in writing. The notice is deemed to have been submitted on time if it is sent within a term specified in subsection (2) or (4) of this section.

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(6) If a notice regarding loss of or damage to the goods or a time limit having been exceeded is submitted upon delivery of the goods, it shall be sufficient to notify the person who delivers the goods.

§ 802. Limitation period for claims

(1) The limitation period for claims arising from carriage provided for in this Division shall be one year. The limitation period for claims for compensation for damage caused intentionally or through gross negligence shall be three years.

(2) The limitation period for claims specified in subsection (1) of this section shall commence upon delivery of the goods. If the goods are not delivered, the limitation period shall commence on the date when the goods should have been delivered. If the time of delivery of the goods has not been agreed, the limitation period shall commence when sixty days have passed from acceptance of the goods for carriage.

(3) If a person obligated to satisfy a claim arising from carriage can demand compensation for that which was delivered from another person in order for the claim to be satisfied, the limitation period for the person's claim for compensation shall commence as of satisfaction of the claim arising from carriage or as of the entry into force of a court judgment regarding the carriage. The provisions of this subsection do not apply if the person against whom the claim for compensation is submitted is not notified of the damage within three months as of the time when the person entitled to exercise the right of recourse became aware or should have become aware of the damage and of the person obligated to fulfil the claim pursuant to the right of recourse.

(4) If the sender or consignee makes an application in a format which can be reproduced in writing by which the sender or consignee submits a claim for compensation for damage, the limitation period for a claim against the carrier shall be suspended until such time as the carrier rejects satisfaction of the claim in a format which can be reproduced in writing. Submission of the same claim for compensation in a new application shall not suspend the limitation period anew.

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(5) A limitation period shall not be extended or shortened under standard terms.

§ 803. Right of security

(1) The carrier has the right of security on goods together with the accompanying documents in order to secure all claims arising from the contract of carriage and claims arising from earlier contracts of carriage, forwarding contracts and storage contracts entered into with the sender.

(2) The right of security continues until the goods are in the possession of the carrier, above all until the carrier is able to dispose of the goods on the basis of a bill of lading or a warehouse receipt. The right of security continues after delivery of the goods if the carrier files an action arising therefrom within three days after delivery of the goods and if the goods are still in the possession of the consignee.

(3) Notices regarding the sale of a pledged thing specified in § 293 and subsection 294 (2) of the Law of Property Act (RT I 1993, 39, 590; 1999, 44, 509; 2001, 34, 185; 52, 303; 93, 565; 2002, 47, 297; 53, 336; 2003, 13, 64; 17, 95; 78, 523) shall be submitted to the consignee. If the consignee cannot be identified or if the consignee refuses to accept the goods, the notices shall be submitted to the sender.

§ 804. Successive carriage

If several carriers participate in carriage and the carriers agree that the last carrier will collect the claims of the previous carriers, the last carrier shall exercise the rights of the previous carriers, particularly the right of security. The right of security of each previous carrier continues until extinction of the right of security of the last carrier. If a successive carrier satisfies a claim of a previous carrier, the right of security and the claim of the carrier shall be transferred to the carrier who satisfies the claim.

§ 805. Rankings of several rights of security

(1) If the goods are encumbered with several rights of security arising from law in favour of a broker, carrier, forwarding agent or depositary, the right of security arising from the carriage of the goods after carriage shall be privileged in respect of the right of security which arose earlier from the same legal bases.

(2) The rights of security arising from carriage of the goods shall be privileged in respect of the rights of security of a broker or depositary which do not arise from sending or carrying the goods and in respect of the rights of security of a forwarding agent or carrier which secure advance payments.

§ 806. Bill of lading

(1) The carrier may issue a document signed thereby concerning the goods which grants the legal possessor of the document the right to demand delivery of the goods by the carrier (a bill of lading). A bill of lading is a document of title. A bill of lading shall contain the information specified in subsection 775 (1) of this Act. The signature of the carrier may be replaced by a clip-mark.

(2) The rights and obligations of the carrier and the consignee shall be determined pursuant to the bill of lading. The consignment note shall prevail in the relationship between the carrier and sender even if a bill of lading has been issued.

(3) If the carrier has accepted the goods for carriage, the delivery of a bill of lading to a person who is entitled to receive the goods pursuant to the bill of lading has the same meaning as transfer of the possession of the goods.

(4) Upon issue of a bill of lading, the goods are presumed to have been accepted by the carrier as described in the bill of lading, unless the carrier has entered a reasoned reservation in the bill of lading. The carrier may justify the reservation by the fact that the carrier does not have reasonable means at the disposal thereof to check the accuracy of information.

(5) If the carrier has checked the gross weight of the goods or other information concerning the quantity of the goods or if the content of the goods and the results of the checks have been entered in a bill of lading signed by both parties, the weight, quantity and content of the goods are presumed to conform to the information in the bill of lading.

(6) Upon delivery of a bill of lading to a third party, the carrier shall not rely on the fact

that the information set out in the bill of lading and specified in subsections (3) and (4) of this section is incorrect, unless the third party knew or should have known that the information set out in the bill of lading was incorrect upon receipt of the bill of lading.

§ 807. Delivery of goods in exchange for return of bill of lading

If a bill of lading has been issued, the carrier is required deliver the goods only if the bill of lading, together with a notation concerning the fact that delivery has been taken of the goods, is returned to the carrier in exchange for delivery.

§ 808. Right to demand delivery of goods on basis of bill of lading

(1) The person to whom the goods shall be delivered pursuant to a bill of lading has the right to receive the goods.

(2) The person who is entitled to receive the goods has the right to give instructions pursuant to the provisions of § 785 of this Act. If the person who is entitled to receive the goods gives instructions to return the goods or to deliver the goods to a person other than the consignee set out in the bill of lading, the carrier may carry out the instructions only if the bill of lading is returned to the carrier.

§ 809. Mandatory nature of provisions

(1) Any agreement which derogates from the provisions of subsection 780 (2), § 781, subsection 785 (7), subsection 789 (2) and §§ 792–802 of this Act to the detriment of a sender who is a consumer is void unless the objects of a contract of carriage are letters or consignments similar to letters.

(2) Any agreement contained in the standard terms which derogates from the provisions of subsection (1) of this section is also void if the parties to a contract of carriage entered into the contract in their economic or professional activities unless the objects of the contract of carriage are letters or consignments similar to letters.

(3) If the law of a foreign state applies to a contract, the provisions of subsections (1) and (2) of this section still apply if both the place where the carrier accepts the goods and the place of delivery of the goods are in Estonia.

Subdivision 2

Removals

§ 810. Obligations of carrier

(1) If the object of a contract of carriage is removals (a contract for removals), the dismantling, loading, unloading and assembly of furniture and other furnishings to be moved are also the obligations of a carrier.

(2) If the sender is a consumer, the obligations of the carrier shall also include the performance of other agreed obligations related to the removals, such as packing and marking.

§ 811. Consignment note and notification

(1) The carrier does not have the right to demand a consignment note from the sender.

(2) If the objects of a contract for removals are dangerous goods, the sender who is a consumer need only notify the carrier of the danger arising from the goods in a general manner and in a form chosen by the sender. The carrier shall inform the sender of this obligation.

(3) If the sender is a consumer, the carrier shall notify the sender of the customs rules and other similar rules which must be complied with. However, the carrier is not required to check the correctness and completeness of documents placed at the disposal of the carrier by the sender and of information communicated to the carrier thereby.

§ 812. Limitation of liability of sender

The sender shall compensate for any damage caused to the carrier only to the extent of 6400 kroons per square metre of loading space necessary for performance of the contract.

§ 813. Release from liability

(1) The carrier shall not be liable for the loss of or damage to the goods to be moved when the damage arises from the special risks inherent in one or more of the following circumstances:

1) the lack of or defective condition of the packing or marking of the furnishings by the sender;

2) loading or unloading of the goods, and other operations with the goods by the sender;

3) carriage of the goods in a container if the carrier was not required to pack the goods;

4) loading or unloading of goods the size or weight of which does not correspond to the spatial conditions of the place for loading or unloading, if the carrier notifies the sender be-

forehand of the risk of damage and the sender nevertheless wishes to load or unload the goods regardless;

5) carriage of livestock or plants;

6) the nature of the goods which particularly exposes them to damage, especially through breakage, functional failure, rust, decay, desiccation or leakage.

(2) The carrier shall not be liable for the loss of or damage to the goods to be moved if the damage is caused to precious metals, jewels, precious stones, money, stamps, coins, securities or documents.

(3) If the carrier establishes that one of the circumstances specified in subsection (1) of this section has occurred and that the damage could be attributed to the circumstance, it is presumed that the damage has been caused by the circumstance.

(4) The carrier is only entitled to claim the benefit of subsections (1) and (2) of this section if the carrier proves that all steps incumbent on the carrier in the circumstances were taken and that the carrier carried out any instructions issued thereto.

§ 814. Limitation of liability of carrier

The liability of the carrier which arises from loss of or damage to the goods to be moved shall be limited to 9600 kroons per square metre of loading space necessary for performance of the contract.

§ 815. Term for notification of damage

The right of claim which arises from the loss of or damage to the goods to be moved shall extinguish if no notification is given of the damage to or loss of the goods within one day as of delivery of the goods if the loss of or damage to the goods is apparent and within fourteen days if the loss of or damage to the goods is not apparent.

§ 816. Non-applicability of limitations on liability

If the sender is a consumer, the carrier shall not rely on the following:

1) preclusion of the liability and limitations on the liability of the carrier provided for in the Subdivision 1 of this Chapter and in §§ 813 and 814 of this Act if, upon entry into the contract, the carrier fails to notify the sender clearly and in a format which can be reproduced in writing of any provisions which preclude or limit the liability of the carrier and of the possibility of agreeing on more extensive liability or insuring the goods;

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2) the provisions of §§ 801 and 815 of this Chapter if the carrier fails to notify the sender not later than upon delivery of the goods and in a format which can be reproduced in writing, of the manner of notification of damage, the terms for submission of a notice and the legal consequences of failure to give notification of damage.

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§ 817. Mandatory nature of provisions

(1) If the sender is a consumer, any agreement which derogates from the provisions of Subdivisions 1 and 2 of this Division concerning the liability of the carrier and the sender to the detriment of the sender is void.

(2) Any agreement contained in the standard terms which derogates from the provisions of subsection (1) of this section is void.

(3) If the law of a foreign state applies to a contract for removals, the provisions of subsections (1) and (2) of this section still apply if both the place where the carrier accepts delivery of the goods to be removed and the place of delivery of the goods to be moved are in Estonia.

Subdivision 3

Multimodal Carriage

§ 818. Contract of combined carriage

If goods are carried on the basis of a single contract of carriage by sea, air or land and using different vehicles (a contract of combined carriage), the provisions of Subdivision 1 of this Division apply to the contract unless otherwise provided for in this Subdivision.

§ 819. Known place where damage is caused

If, in the case of combined carriage, it is known that the goods have been lost or damaged on a particular leg of the journey or if an event has occurred on a leg of the journey due to which a time limit has been exceeded, the carrier shall be liable pursuant to the provisions which would apply to the leg of the journey if a separate contract of carriage had been entered into concerning that leg of the journey. The burden of proof regarding the loss of or damage to the goods or of a time limit being exceeded on a particular leg of the journey shall lie with the person who claims that the goods were lost or damaged or that the time limit was exceeded.

§ 820. Notification of damage

The provisions of § 801 of this Act apply regardless of whether the place where the goods were damaged or lost is known, unknown or will become known later. If the place where the goods were damaged or lost is known, a notice concerning damage to or loss of the goods is also deemed to have been submitted on time if the provisions which apply to entry into a separate contract of carriage concerning the leg of the journey are complied with.

§ 821. Expiry of claims

(1) The limitation period for a claim arising from loss of or damage to the goods or from a time limit being exceeded shall commence upon delivery of the goods to the consignee.

(2) Any agreement contained in the standard terms which derogates from the provisions of subsection (1) of this section is void.

§ 822. Combined contract for removals

The provisions of Subdivision 2 of this Division apply to combined contracts for removals. If the goods have been lost or damaged on a particular leg of the journey or if an event has occurred on a leg of the journey due to which a time limit has been exceeded, the carrier shall be liable pursuant to the provisions which would apply to the leg of the journey only if an international convention binding on Estonia applies to the leg of the journey where the damage was caused.

§ 823. Application of provisions

A contract may prescribe that even if the place where damage is caused is known, liability shall be determined pursuant to the provisions of Subdivision 1 of this Division regardless of during which leg of the journey the damage is caused.

Division 2

Contract for Carriage of Passengers

Subdivision 1

General Provisions

§ 824. Contract for carriage of passengers

(1) By a contract for the carriage of passengers, one person (the carrier) undertakes on behalf of another party to carry one or more persons (passengers) to a destination with or without baggage, and the other party undertakes to pay a charge (the carriage charge).

(2) The provisions concerning contracts for services apply to contracts for the carriage of passengers unless otherwise provided for in this Division.

(3) The provisions of this Division apply to the carriage of passengers by air or sea only in so far as this area is not regulated otherwise by law or an international convention binding on Estonia.

§ 825. Charter contract

(1) A charter contract is a contract for the carriage of passengers by which a carrier undertakes to carry another party or passenger using a vehicle which the carrier grants the other party or the passenger complete use of, together with an operator, for the purpose of carriage. A charter contract may be entered into for a specified or unspecified term.

(2) By a charter contract, the carrier requires the operator of the vehicle to carry out the instructions of the other party or the passengers to the extent determined in the contract. The carrier shall be liable for carrying out the instructions.

(3) The provisions of this Act concerning lease contracts and commercial lease contracts do not apply to charter contracts.

§ 826. Baggage

(1) Things which a carrier undertakes to carry pursuant to a contract for the carriage of passengers are deemed to be baggage. Baggage does not include things which are carried pursuant to a contract for the carriage of goods. It is presumed that the carriage of passengers also includes the carriage of baggage.

(2) Hand baggage is baggage kept in the personal custody of a passenger.

§ 827. Time limit for carriage

The carrier shall transport the passenger and his or her baggage to his or her destination within the term agreed in the contract or, in the absence of an agreement, within a term which could be expected of a diligent carrier under ordinary conditions (the time limit for carriage).

§ 828. Duration of carriage

(1) The carriage of passengers covers the period of time during which:

1) the passengers are in the vehicle or are boarding or leaving the vehicle;

2) the passengers are being transported from a terminal, quay, waiting platform, waiting room or any other similar construction to the vehicle or from the vehicle to such a construction if the cost thereof is included in the carriage charge or if the passengers have been granted use of the vehicle used therefor by the carrier.

(2) The carriage of baggage covers the period of time between acceptance of the baggage for carriage and delivery of the baggage. The carriage of hand baggage covers the same period of time as the carriage of passengers.

§ 829. Liability of carrier for failure to provide vehicle on time

(1) If the carrier notifies the other party that a vehicle will not be provided by the agreed time or if a vehicle has not been provided by the agreed time, the other party may withdraw from the contract. No additional term need be granted for withdrawal from the contract.

(2) The carrier shall compensate for any damage caused by failure to provide a vehicle for carriage.

§ 830. Obligation of carrier to compensate for damage

The carrier shall compensate for any damage arising from:

1) the death of or bodily injury or physical harm to a passenger caused during carriage or due to circumstances related to carriage;

2) partial or total loss of or damage to baggage during carriage or due to circumstances related to carriage;

3) a time limit being exceeded.

§ 831. Notification of damage

(1) In the event of apparent damage to hand baggage, the passenger shall, upon leaving the vehicle, notify the carrier of the damage caused to him or her. In the event of apparent damage to other baggage, notification shall be given of the damage upon delivery of the baggage.

(2) If baggage is damaged but the damage is not apparent, notification shall be given of the damage in a format which can be reproduced in writing within ten days after leaving the vehicle or delivery of the baggage.

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(3) If hand baggage is lost, the passenger shall notify the carrier of the loss of his or her hand baggage upon leaving the vehicle. If other baggage is lost, the passenger shall notify the carrier of the loss of the other baggage within ten days as of the day when the baggage should have been delivered.

(4) If a passenger does not comply with the provisions of subsections (1)-(3) of this section, the passenger is presumed to have received all of his or her baggage in good condition.

(5) A passenger shall not submit a claim for compensation for damage arising from a time limit being exceeded if he or she fails to notify the carrier of the damage within one month after arrival at his or her destination.

§ 832. Defects of vehicle and disabilities of its operator

In the event that a carrier violates its obligations, the carrier shall not rely on the physical or mental disabilities of the operator of the vehicle or on the defects of the vehicle used for carriage as circumstances which release the carrier from liability.

§ 833. Preclusion of liability of carrier

(1) A carrier shall not be liable for any damage caused by loss of or damage to coins, securities, gold, silver, jewels, works of art or other valuables, unless these valuables have been separately deposited with the carrier in order to avoid loss thereof or damage thereto.

(2) A carrier shall not be liable for any damage caused to things which are brought into a vehicle by a passenger if the carrier would not have permitted them to be brought into the vehicle if the carrier had known of their nature or condition and regarding which the carrier has not issued a baggage check if the passenger knew or should have known that the carrier would not permit these things to be carried. In such case, the passenger shall be liable for all expenses incurred by and damage caused to the carrier by the carrying of such things.

§ 834. Limitations on liability of carrier

(1) The liability of a carrier for the death of a passenger or for damage arising from the causing of a bodily injury or physical harm to a passenger shall be limited to 3 360 000 kroons per passenger.

(2) The liability of a carrier for any damage which is caused due to loss of or damage to a vehicle, including baggage located in the vehicle, which is used pursuant to a contract for the carriage of passengers shall be limited to 200 000 kroons per passenger.

(3) The liability of a carrier for any damage caused by loss of or damage to hand baggage shall be limited to 35 000 kroons per passenger. The liability of a carrier for loss of or damage to other baggage shall be limited to 55 000 kroons per passenger.

(4) If the valuables specified in subsection 833 (1) of this Act are deposited separately with the carrier, the liability of the carrier in the event of loss of or damage to such valuables shall be limited to 50 000 kroons per passenger.

(5) The liability of a carrier for any damage caused by a time limit being exceeded shall be limited to 50 000 kroons per passenger.

(6) The limitations on liability provided for in subsections (1)-(5) of this section do not apply to claims for interest and compensation for procedural expenses.

§ 835. Limitation of liability in event of several obligors

If several persons are liable for causing damage, the liability of these persons in total shall be limited by the limitations provided for in § 834 of this Act.

§ 836. Solidary liability of carrier and actual carrier

(1) If carriage is wholly or partially performed by another person (the actual carrier), the actual carrier shall be liable in the same manner as a carrier for any damage arising from the death of a passenger, the causing of bodily injury or physical harm to a passenger, damage to or loss of baggage, a time limit being exceeded or another breach of a contract during carriage performed thereby. An agreement between a carrier and another party on extension of the liability of the carrier, as compared to the provisions of law, applies to the actual carrier only if the actual carrier has agreed thereto in a format which can be reproduced in writing.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) An actual carrier may present any objections which a carrier has arising from a contract of carriage.

(3) A carrier and an actual carrier shall be solidarily liable for damage.

§ 837. Non-applicability of limitations on liability

The limitations on liability provided for in this Subdivision do not apply if the carrier causes

damage intentionally or through gross negligence.

§ 838. Claims not arising from contract

The limitations on liability provided for in this Subdivision also apply to claims other than those arising from the causing of the death of a passenger or bodily injury or physical harm to a passenger, loss of or damage to baggage and a time limit being exceeded which arise from a contract for the carriage of passengers.

§ 839. Liability of employees

If a claim arising from the causing of the death of a passenger or bodily injury or physical harm to a passenger, loss of or damage to baggage or a time limit being exceeded is submitted against an employee of a carrier or actual carrier or against another person for whom the carrier or actual carrier is responsible, the employee or other person may also rely on the limitations on liability prescribed in this Division and a contract for the carriage of passengers unless the damage is caused intentionally by the employee or other person or through his or her gross negligence.

§ 840. Obligations of passengers

(1) During carriage, passengers shall act in such a manner as not to endanger the safety of the carriage or violate the conditions of proper carriage. Passengers shall carry out the instructions of the carrier, the operator of the vehicle or any other competent person.

(2) A passenger shall present his or her baggage for carriage such that it is not likely to encourage loss or damage and such that no damage is caused to the carrier by the baggage. If baggage includes a dangerous thing, the passenger shall notify the carrier of the existence of the dangerous thing and of the general nature of the danger.

§ 841. Liability of passengers

A passenger shall compensate the carrier for any damage caused by the passenger or his or her baggage. Upon violation of his or her own obligations, the passenger shall not rely on the defects or nature of his or her baggage as circumstances which release him or her from liability.

§ 842. Liability of other party

(1) If a passenger or all the passengers or their baggage is not ready for carriage on

time at the agreed place for any reason, the carrier may cancel the contract or commence the journey. If damage is caused to the carrier due to the fact that a passenger or all the passengers or their baggage is not ready for carriage on time for any reason, the other party shall compensate the carrier for the damage.

(2) The other party shall compensate the carrier for any damage which is caused to the carrier because of a passenger not having the documents with him or her which he or she should have and for the existence of which the other party is responsible.

(3) In the case of carriage under a charter contract, the other party shall compensate the carrier for any damage which is caused to the carrier by carrying out the instructions of the other party or a passenger upon performance of the contract, unless the operator of the vehicle acts unreasonably in carrying out such instructions.

§ 843. Provisions applicable to carriage of baggage

In addition to the provisions of this Division, the provisions of §§ 780, 786, 791, 794, 796, 803 and 804 of this Act apply to the carriage of baggage unless otherwise agreed by the parties.

§ 844. Termination of contract after passenger leaves vehicle

If a passenger, after leaving the vehicle during the journey, does not return to the vehicle on time, the carrier may deem the contract to have been performed. In such case, the carrier retains the right to the agreed charge.

§ 845. Right of cancellation of other party

(1) The other party has the right to cancel a contract for the carriage of passengers at any time but shall then compensate the carrier for any damage caused thereby. A contract for the carriage of passengers shall not be cancelled if this would result in the journey being delayed.

(2) The other party need not compensate the carrier for any damage arising from cancellation of a contract for the carriage of passengers if the contract is cancelled due to circumstances regarding which the risk of occurrence is borne by the carrier.

§ 846. Obligation to indicate name and residence or seat of carrier

The carrier shall clearly indicate at least the name and residence or seat thereof on tickets, baggage checks and other similar documents related to carriage. Any agreement which derogates from this requirement is void.

Subdivision 2

Carriage of Passengers by Public Transport Vehicles

§ 847. Public transport

The carriage of passengers in Estonia on a certain line by bus, train, passenger ferry or other public transport vehicle according to a timetable which can be publicly accessed is deemed to be public transport. Carriage under charter contracts, regularly organised pleasure trips and other similar carriage are not public transport.

§ 848. Obligation to carry

In the case of public transport, the carrier shall not refuse to enter into a contract of carriage or carry a passenger if:

1) the passenger requests carriage in compliance with the standard terms and

2) carriage is possible by a vehicle regularly used in public transport and

3) there are no circumstances hindering the carriage which cannot be prevented or eliminated by the carrier.

§ 849. Ensurance of benefits to passengers

If benefits are prescribed in the standard terms, the carrier shall ensure these benefits equally to all applicants to whom these benefits apply.

Subdivision 3

Contract for Combined Carriage of Passengers

§ 850. Contract for combined carriage of passengers

If passengers are carried on the basis of a single contract for the carriage of passengers by sea, air or land using different vehicles (a contract for the combined carriage of passengers), the provisions of Subdivision 1 of this Division apply to the contract unless otherwise provided for in this Subdivision.

§ 851. Known place where damage is caused

If, in the case of the combined carriage of passengers, it is known that circumstances which caused damage arose on a particular leg of the journey, the carrier shall be liable pursuant to the provisions which apply to a contract which would have been entered into concerning this leg of the journey. The burden of proof regarding the fact that circumstances which cause damage arose on a particular leg of the journey shall lie with the person who claims that the circumstances arose.

§ 852. Notification of damage

(1) The provisions of § 831 of this Act apply regardless of whether the place where the damage was caused is known, unknown or will become known later.

(2) If the place where baggage was damaged or lost is known, a notice is also deemed to have been submitted on time if the provisions which would apply to entry into a separate contract for the carriage of passengers concerning the last leg of the journey are complied with.

Subdivision 4

Mandatory nature of provisions of this Division

§ 853. Mandatory nature of provisions

Any agreement which precludes or limits the liability of carriers or alleviates the burden of proof of carriers as compared to the provisions of this Division is void.

Chapter 43

Forwarding Contract

§ 854. Definition of forwarding contract

(1) By a forwarding contract, one person (the forwarding agent) undertakes to organise the carriage of goods on account of another person (the consignor) and the consignor undertakes to pay a charge to the forwarding agent.

(2) The provisions concerning authorisation agreements apply to forwarding contracts unless otherwise provided for in this Chapter.

§ 855. Organisation of carriage

(1) The obligation to organise the carriage of goods shall above all include the following:

1) determination of the vehicle and the transportation route;

2) selection of a carrier;

3) entry into the contract of carriage, storage contract and forwarding contract which are necessary for carriage, and provision of the information and giving of instructions which are necessary for the performance of these contracts;

4) securing the claims of consignors for compensation.

(2) A forwarding agent may, by a contract, undertake to perform other obligations related to carriage, such as securing and packing goods, marking goods and organising customs clearance, including entering into the necessary contracts.

(3) A forwarding agent shall enter into the necessary contracts in the name of the forwarding agent or, if authorised therefor, in the name of the consignor.

(4) Upon performing the obligations thereof, a forwarding agent shall act in the interests of the consignor and carry out the instructions of the consignor.

§ 856. Obligations of consignor

(1) A consignor shall, if necessary, pack and mark goods and shall place the documents and all the information which a forwarding agent requires to perform the obligations thereof at the disposal of the forwarding agent. Upon the carriage of dangerous goods, the consignor shall, in a format which can be reproduced in writing, inform the forwarding agent of the exact nature of the danger and, if necessary, of the precautions to be taken.

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(2) The consignor shall compensate the forwarding agent for any damage and reimburse any expenses which are incurred due to:

1) insufficient packing or marking of the goods;

2) failure to give notification of the danger related to the goods or the giving of incorrect or insufficient notification;

3) the absence, incompleteness or incorrectness of information necessary to conduct

official operations related to the goods.

(3) The consignor shall be liable in the cases specified in subsection (2) of this section regardless of whether the violation of obligations by the consignor is justifiable. A consignor who is a consumer shall be liable only if damage is caused through the fault of the consignor.

§ 857. Payment of charges

If goods are delivered to the carrier, a charge shall be paid to the forwarding agent.

§ 858. Obligation to notify and deliver

(1) The forwarding agent shall communicate the necessary notices to the consignor and, after performance of the forwarding contract, submit a report on the performance of forwarding contract. At the request of the consignor, the forwarding agent shall provide information on the performance of the forwarding contract to the consignor.

(2) The forwarding agent shall return to the consignor all the objects which the forwarding agent acquires in connection with organising carriage.

(3) The consignor may submit a claim against the forwarding agent arising from a contract entered into by the forwarding agent in the name of the forwarding agent but on account of the consignor only if the forwarding agent has assigned the claim to the consignor. Claims of the forwarding agent arising from a contract entered into by the forwarding agent in the name of the forwarding agent but on account of the consignor are not part of the bankruptcy estate of the forwarding agent and a claim for payment shall not be made thereon against the forwarding agent in execution proceedings.

§ 859. Assumption of carriage by forwarding agent

Forwarding agents have the right to carry goods. When exercising this right, forwarding agents have the rights and obligations of carriers. In such case, forwarding agents may also demand a carriage charge in addition to the forwarding charge.

§ 860. Joint carriage of several goods

(1) The forwarding agent has the right to organise the carriage of goods together with the goods of other consignors on account of the forwarding agent pursuant to the contract of carriage entered into regarding the goods of all the consignors.

(2) In the case specified in subsection (1) of this section, the forwarding agent has the

rights and obligations of a carrier in respect of the consignor. In such case, the forwarding agent may demand a carriage charge which is reasonable in the circumstances but which is not more than the standard carriage charge for the carriage of such goods.

§ 861. Liability of forwarding agent

(1) The forwarding agent shall compensate for any damage caused by the loss of or damage to goods the carriage of which is organised by the forwarding agent. The provisions of §§ 793 and 794, subsections 795 (1) and (2) and §§ 796-799 of this Act apply correspondingly.

(2) The forwarding agent shall be liable for any damage not specified in subsection (1) of this section if the forwarding agent has violated the obligations specified in subsections 855 (1) or (2) of this Act. The forwarding agent shall not be liable if the forwarding agent proves that the damage could not have been prevented even with due diligence.

(3) If the behaviour of the consignor or the specific defects of the goods contribute to causing the damage, the obligation to compensate and the amount of compensation shall depend on the extent to which these circumstances contribute to causing the damage.

§ 862. Expiry of claims

The provisions of § 802 of this Act apply to the expiry of claims arising from forwarding contracts.

§ 863. Right of security

The forwarding agent has the right of security regarding the goods in order to secure all claims arising from the forwarding contract and claims arising from earlier contracts of carriage, forwarding contracts and storage contracts entered into with the consignor. The provisions of § 803 of this Act apply correspondingly.

§ 864. Successive forwarding agent

(1) If, in addition to the forwarding agent, another forwarding agent (a successive forwarding agent) who is required to deliver the goods to the consignee participates in carriage organised by the forwarding agent, the provisions of § 804 of this Act apply to the successive forwarding agent.

(2) If a successive forwarding agent satisfies a claim of a previous carrier or forwarding agent, the claim and right of security of the previous carrier or forwarding agent shall transfer to the successive forwarding agent.

§ 865. Mandatory nature of provisions

(1) Any agreement which derogates from the provisions of subsection 861 (1) and § 862 of this Act to the detriment of a consignor who is a consumer is void unless the objects of the forwarding contract are letters or consignments similar to letters.

(2) Any agreement contained in the standard terms which derogates from the provisions of subsection (1) of this section is void also unless the object of the forwarding contract is organisation of the carriage of letters or consignments similar to letters.

(3) If the law of a foreign state applies to the forwarding contract, the provisions of subsections (1) and (2) of this section still apply if both the place of accepting the goods for carriage and the place of delivery of the goods are in Estonia.

Chapter 44

Package Travel Contract

§ 866. Definition of package travel contract

(1) By a package travel contract, one person (the tour operator) undertakes on behalf of another party to provide a combination of travel services (a package) to one or more persons (the travellers) and the other party undertakes to pay the price (the price of the package).

(2) A package is a pre-arranged combination of not fewer than two of the following travel services when offered at an inclusive price and when the service covers a period of more than twenty-four hours:

1) transport services;

2) accommodation services;

3) other services not ancillary to transport or accommodation services and accounting for a significant proportion of the whole package of travel services.

(3) A package is also a combination of travel services provided over a period of less than twenty-four hours but including accommodation.

(4) A person who sells or offers for sale a package put together by a tour operator (a retailer) shall be liable for providing the prescribed information to a traveller and performing the obligations arising from the travel contract solidarily with the tour operator.

(5) The provisions of this Chapter also apply if payment for individual travel services

within the same package is made separately.

§ 867. Description of package

(1) The description of a package made available to travellers by the tour operator and any other terms or conditions of a package forwarded to a traveller shall not contain any misleading information. The description of a package may be set out in a brochure or other similar material.

(2) The description of a package shall set out the following information concerning each package:

1) the destination and the itinerary;

2) the price of the package and the manner of and terms for payment;

3) the means, characteristics and categories of transport used;

4) the type of accommodation, its location, category or degree of comfort and its main features, and its approval and tourist classification under the rules of the host country concerned;

5) the meal plan;

6) the passport, visa and insurance requirements and health formalities applicable to the traveller;

7) the right of the tour operator to withdraw from the travel contract if the number of travellers is smaller than that prescribed by the operator, provided that the tour operator has reserved this right.

(3) Information contained in the description of a package is binding on the tour operator unless otherwise agreed by the parties or unless the possibility of changes to the information is stated in the description and the changes to the information have been clearly communicated to the traveller before entry into the package travel contract.

§ 868. Informing traveller before entry into contract

(1) Before the contract is entered into, the traveller shall be provided, in a format which can be reproduced in writing, with general information on passport and visa requirements applicable to the traveller and in particular on the periods for obtaining them, as well as with information on the health formalities required for the package and the stay at the destination.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) The tour operator does not have the obligation specified in subsection (1) of this section if the information has already been included in a brochure made available to the traveller by the tour operator and has not been changed in the meantime.

§ 869. Provision of standard terms and issue of travel confirmation to traveller

(1) If the tour operator uses standard terms as the bases of a package travel contract, these terms shall be communicated to the travellers before entry into the contract.

(2) The tour operator shall issue travel confirmation to the traveller immediately after entry into the contract in a format which can be reproduced in writing. The travel confirmation shall contain at least the following information:

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

1) the name and address of the tour operator and, in the event of the contract being entered into through a retailer, the name and address of the retailer;

2) the information specified in subsections 867 (2) and (3) of this Act;

3) the dates on which and the times and places at which the package will begin and end, and the duration of the journey to the destination and back;

4) the itinerary and the times and places of intermediate stops and transport connections;

5) the visits, trips and other services included in the price of the package;

6) the possibility that the price of the package may increase and the conditions under which the price will increase;

7) information on dues, taxes or fees which may be chargeable but are not included in the price of the package, such as landing taxes, embarkation or disembarkation fees at ports and airport taxes;

8) possible special agreements made with the traveller;

9) the obligation of the traveller to notify the tour operator or retailer of any violation of the contract;

10) a reference to the fact that, in order to cancel the contract due to a violation of the contract, the traveller shall, as a rule, grant a term for elimination of the violation;

11) information on the term during which the traveller may submit claims arising from a violation of the contract and the person to whom these claims shall be submitted;

12) information on the possibility of insuring against the tour operator withdrawing from the contract or to cover the cost of assistance, including repatriation in the event of accident

or illness.

(3) If the tour operator has provided the traveller with a description of the package which includes the information specified in subsection (2) of this section and the tour operator refers to the description of the package upon entry into the contract, the travel confirmation need not set out the information included in the description of the package. The travel confirmation shall in any case set out the price of the package and the terms for payment thereof.

(4) The tour operator need not issue travel confirmation if the journey is booked less than seven days before the start of the journey. In such case, the traveller shall at least be notified of the obligations specified in clauses (2) 9) and 10) of this section not later than before the start of the journey.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

§ 870. Informing traveller before start of journey

(1) The following information shall be communicated to the traveller in good time before the start of the journey:

1) the information specified in clause 869 (2) 3) of this Act;

2) the details of the place to be occupied by the traveller if a particular place is designated for the traveller;

3) the names, telephone numbers and addresses of the local representatives of the tour operator and the potential retailer or, in the event of there not being a local representative, the address and telephone number of a local agency on whose assistance a traveller in difficulty could call and from where he or she contact the tour operator or retailer.

(2) If the traveller is a person with restricted active legal capacity, the other party to the package travel contract or a person specified thereby shall be provided with information enabling direct contact to be established with the person with restricted active legal capacity who is on the journey or with a person who is responsible for that person at the place of stay.

(3) The communication of information provided for in subsections (1) and (2) of this section is not required if the information is already contained in the brochure or travel confirmation made available to the traveller or other party to the package travel contract and has not been changed in the meantime.

§ 871. Increase of price of package

The tour operator may only increase the price of the package if:

1) the contract expressly provides for the possibility of the price being increased and states the procedure for calculation of the new price, and

2) the need to increase the price of the package has arisen due to changes in the costs of transport, including the cost of fuel, or landing taxes, embarkation or disembarkation fees at ports and airports, charges related to services or the exchange rates applied to the particular package, and

3) the traveller is informed of the increase in the price of the package at least twenty-one days before the start of the journey.

§ 872. Rights of traveller in event of amendment of contract

(1) The tour operator shall immediately inform the traveller of any increase in the price of the package, changes to any essential travel service or cancellation of the journey and the reasons therefor.

(2) If the price of the package is increased to a significant extent or an essential travel service is changed significantly, the traveller may withdraw from the contract. Instead of withdrawing, the traveller may demand a substitute package of equivalent or higher cost where the tour operator is able to offer the traveller such a substitute, or a substitute package of lower cost and a refund of the difference in price between the packages.

(3) The traveller may only exercise the rights provided for in subsection (2) of this section immediately after receipt of a corresponding notice from the tour operator or retailer.

§ 873. Assumption of package travel contract

(1) The traveller may, until the start of the journey, transfer his or her rights and obligations arising from the contract to another person who satisfies all the conditions applicable to the package. If the traveller informs the tour operator or retailer of the transfer in a good time before the start of the journey, the tour operator is deemed to have granted consent for the assumption of the contract.

(2) In the case specified in subsection (1) of this section, the transferee and transferor of the package shall be solidarily liable for payment of the price of the package and for any additional costs arising from such transfer of the contract.

§ 874. Withdrawal from contract before start of journey

(1) The traveller may withdraw from the contract at any time before the start of the journey.

(2) If the traveller withdraws from the contract, the tour operator loses the right to the

price of the package. In such case, the tour operator may demand reasonable compensation.

(3) The amount of compensation specified in subsection (2) of this section is the price of the package from which the expenses saved by the tour operator are deducted along with anything which the tour operator may obtain by using the travel service differently. The amount of such compensation may be set out in the contract as a percentage of the price of the package.

§ 875. Measures upon violation of contract

(1) The traveller shall notify the immediate provider of the travel services and the tour operator or retailer of any violation of the contract. The tour operator shall take reasonable measures at the expense thereof in order to eliminate the violation. The traveller may grant the tour operator a reasonable term to eliminate the violation. This does not preclude or restrict the right of the traveller to reduce the price of the package.

(2) If the tour operator fails to take measures within the reasonable term granted therefor by the traveller, the traveller may take measures himself or herself and demand reimbursement of the expenses incurred therefor from the tour operator. The traveller may also take measures without granting a term if the tour operator refuses to take the measures or if the traveller has a special interest in the measures being taken immediately.

§ 876. Cancellation of contract by traveller

(1) If the tour operator materially violates the contract during the journey, the traveller may cancel the contract if the violation is not eliminated within a reasonable period of time after notification thereof or if the traveller cannot reasonably be expected to continue the journey due to the violation.

(2) If the travel contract is cancelled pursuant to the provisions of subsection (1) of this section, the tour operator loses the right to the price of the package. The tour operator may still demand reasonable compensation for the services provided or the services to be provided to end the journey, unless the traveller is not interested in the services provided or to be provided due to the cancellation of the contract.

(3) Upon cancellation of the contract, the tour operator shall take the necessary measures arising from termination of the contract pursuant to the provisions of subsection (1) of this section, particularly by providing the traveller with equivalent transport back to the place of departure or to another return-point to which the traveller has agreed.

(4) The tour operator shall bear the additional expenses arising from cancellation of the contract pursuant to the provisions of subsection (1) of this section.

§ 877. Liability of tour operator

(1) The tour operator shall be liable to the traveller for performance of the contract regardless of whether the contractual obligations are to be performed by the tour operator or any other person.

(2) The provisions of §§ 875 and 876 of this Act do not preclude or restrict the right of claim of the traveller for compensation for damage caused to him or her by violation of the contract. The traveller may, amongst other things, demand reasonable compensation for non-patrimonial damage for the wasted holiday.

(3) If the liability of the immediate provider of services is limited pursuant to international conventions, the tour operator may rely thereon in respect of the traveller.

(4) If the tour operator violates an obligation arising from the contract, the tour operator shall take all reasonable steps in order to provide immediate assistance to a traveller in difficulty. There is no such duty if the violation occurs due to the fault of the traveller.

§ 878. Prohibition on limitation and preclusion of liability

(1) Any agreement which precludes or limits the liability of a tour operator for damage which is caused intentionally or due to gross negligence is void.

(2) Any agreement which limits the liability of a tour operator for causing the death of a traveller or bodily injury or physical harm to a traveller is void.

(3) The liability of a tour operator for damage not specified in subsection (2) of this section may be limited to three times the amount of the price of the package.

§ 879. Cancellation of contract due to *force majeure*

(1) If the provision of travel services becomes impossible, impracticable or dangerous due to *force majeure*, either party may cancel the contract.

(2) Upon cancellation of the contract on the bases provided for in subsection (1) of this section, the tour operator loses the right to the price of the package but may demand reasonable compensation for the services provided or the services to be provided to end the journey. Upon cancellation of the contract, the tour operator shall take the necessary measures arising from termination of the contract, particularly by providing the traveller with equivalent transport back to the place of departure or to another return-point to which the traveller has agreed.

(3) Upon cancellation of the contract on the bases provided for in subsection (1) of this section, the parties shall bear the additional expenses related to transporting the traveller back to the place of departure in equal shares. Other additional expenses arising from cancellation of the contract shall be borne by either of the parties.

§ 880. Application of provisions

(1) The provisions of §§ 867–870 of this Act do not apply if a person organises packages only occasionally and outside the scope of the economic activity thereof.

(2) The provisions of this Chapter apply to contracts entered into with travellers with a residence or seat in Estonia or in a Member State of the European Union if the contracts are entered into as a result of an auction, advertising or other such economic activity in Estonia, regardless of which state's law applies to the contracts.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

§ 881. Prohibition on violation of provisions

A person or agency provided by law may, pursuant to the procedure provided by law, demand that a tour operator or retailer who violates the provisions of this Chapter or § 194 of this Act terminate the violation and refrain from further violation.

§ 882. Mandatory nature of provisions

Any agreement which derogates from the provisions of this Chapter to the detriment of the traveller is void.

Chapter 45

Deposit Contract

Division 1

General Provisions

§ 883. Definition of deposit contract

By a deposit contract, one person (the depositary) undertakes to keep a movable delivered to the depositary by another person (the depositor) and return it to the depositor upon termination of the deposit.

§ 884. Storage fee

(1) A depositary has the right to receive remuneration (a storage fee) only if the parties have expressly agreed thereon or if payment of remuneration may be expected under the circumstances.

(2) A storage fee is deemed to have been tacitly agreed upon if, under the circumstances, taking deposit of a movable is to be expected only for remuneration, particularly if the depositary enters into a deposit contract in the course of the economic or professional activities thereof.

§ 885. Liability upon gratuitous deposit

In the case of a gratuitous deposit, the depositary shall not be liable for the loss or destruction of or damage to a thing or for failure to return the thing on time, provided that the depositary has exercised such care in keeping the thing as the depositary would normally exercise in keeping the depositary's own things.

§ 886. Use and transfer of thing to third party

(1) It is presumed that the depositary shall not use the thing or grant it for use to or deposit it with a third party.

(2) If the thing is deposited with a third party, the depositary shall be liable for the activities of the third party in the same manner as for the depositary's own activities, unless the deposit of the thing is undertaken gratuitously and the depositary is forced to transfer the deposit due to circumstances not dependent on the depositary.

(3) If the depositary uses the thing despite its use being prohibited, the depositary shall pay the depositor a reasonable fee for the use of the thing and shall be liable for the destruction of and damage to the thing unless the depositary proves that the thing would have been destroyed or damaged even if kept by the depositor.

§ 887. Change of manner of custody

The depositary may change the manner of custody agreed upon if the depositary can assume that the depositor would approve of the change if the depositor had known of the circumstances which brought about the change. The depositary shall promptly notify the depositor of any change in the manner of custody.

§ 888. Reimbursement of expenses and compensation for damage caused to depositary

(1) The depositor shall reimburse the depositary for any expenses related to the deposit which the depositary may have regarded as necessary under the circumstances. The depositary has the right of security in respect of the deposited thing in order to ensure reimbursement of the expenses and the claims for payment.

(2) The depositor shall compensate the depositary for any damage arising from the dangerous nature of the thing unless, at the time of the deposit, the depositor did not know and did not have to know of the dangerous nature of the thing or unless the depositor gave the depositary notice of the dangerous nature of the thing or the depositary knew this in any case.

§ 889. Depositor's right to demand return of thing

The depositor may cancel the deposit contract and demand the return of the thing deposited at any time even if the term for deposit has been agreed upon. If the term for deposit has been agreed upon, the depositor shall reimburse the depositary for any expenses incurred by the depositary bearing in mind the agreed term.

§ 890. Depositary's right to claim withdrawal of thing

If the term for deposit has not been determined, the depositary may cancel the deposit contract at any time and demand that the thing deposited be taken back by the depositor. If the term for deposit has been determined, the depositary may demand that the thing be taken back before expiry of the term only with good reason.

§ 891. Requirements for return

(1) The return of the deposited thing shall be made at the expense of the depositor at the place where the thing is to be kept pursuant to the deposit contract.

(2) The thing shall be returned in the condition in which it was deposited. The depositor shall bear the risks related to the return of the thing.

§ 892. Transfer of profit

Upon return of the deposited thing, the depositary shall also transfer the profit received from the thing.

§ 893. Plurality of depositors or depositaries

(1) If the thing is kept jointly by several persons, they shall be solidarily liable to the depositor for performance of the obligations arising from the deposit contract. If the thing is deposited jointly by several persons, these persons are solidary obligees in respect of the depositary.

(2) If several persons have submitted a claim in respect of the thing and have deposited the thing with a third party (a sequester) in order to protect their interests, the third party may deliver the thing only with the consent of all the depositors.

§ 894. Conditions of payment of storage fee

(1) If a storage fee is to be paid, the depositor shall pay the fee at the time of termination of the custody. If payment of the storage fee is determined on the basis of several periods of time, the fee shall be paid at the end of each period.

(2) If custody ends before expiry of the agreed term, the depositary may demand payment of a part of the storage fee in proportion to the actual time of the deposit.

§ 895. Rights of third parties

(1) The depositary shall promptly notify the depositor of loss of possession of the deposited thing or submission of a claim against the depositary for delivery of the thing or if the depositary becomes aware of the rights of a third party to the deposited thing.

(2) If a third party applies for recognition of ownership regarding the deposited thing and submits a claim against the depositary for delivery of the thing, the depositary shall not deliver the thing to the third party without the consent of the depositor. The depositary may return the thing to the depositor. The depositary may refuse to deliver the deposited thing to the depositor if the thing is seized or an action for recognition of ownership of the thing is filed against the depositor.

§ 896. Deposit of money and other fungible things

(1) If fungible things are deposited such that the depositary undertakes to return things of the same kind, quality and quantity, it is presumed that the ownership and the risk of accidental loss of and damage to the things will be transferred to the depositor upon delivery of the things, and the provisions concerning loans apply correspondingly.

(2) In the case specified in subsection (1) of this section, it is presumed that the term and place for returning things will be determined pursuant to the provisions of law regarding deposit contracts.

(3) If the depositary spends any deposited money, the depositary shall pay interest for the time during which the money was spent.

Division 2

Storage Contract

§ 897. Storage contract

A storage contract is a deposit contract by which the depositary undertakes to store and preserve a movable upon deposit of the movable in the course of the economic or professional activities of the depositary, and the depositor undertakes to pay a fee therefor.

§ 898. Obligations of depositor

(1) Upon storage of a dangerous thing, the depositor shall inform the depositary in good time of the exact nature of the danger and the necessary precautions to be taken in a format which can be reproduced in writing. The depositor shall pack and mark the things to the necessary extent and transfer documents and information to the depositary which the depositary requires to perform the obligations thereof.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) If the depositor is a consumer, the depositor need only inform the depositary of the danger arising from the things in a general manner, even orally.

(3) The depositary shall inform a depositor who is a consumer of the obligation specified in subsection (2) of this section and request information from the depositor which the depositary may require in order to carry out formalities related to the thing.

(4) If the depositor is a consumer, the depositary shall pack and mark the things to the necessary extent.

§ 899. Compensation for damage and reimbursement of expenses

(1) The depositor shall compensate the depositary for any damage and reimburse any expenses arising from:

1) the insufficient packing or marking of the thing by the depositor;

2) failure on the part of the depositor to inform of the danger related to the thing;

3) the absence, incompleteness or incorrectness of the documents or information necessary for carrying out formalities related to the thing.

(2) The depositor shall be liable in the cases specified in subsection (1) of this section regardless of whether any violation of the obligations of the depositor is justifiable. If the depositor is a consumer, the depositor shall be liable for any violation of the obligations specified in subsection (1) of this section only if the depositor is culpable of the violation.

§ 900. Mixing of stored things

(1) A depositary has the right to mix fungible things with things of the same kind and quality only if the depositors of these things have expressly agreed thereto.

(2) As of the stored things being mixed, the mixed things shall be in the common ownership of the owners of the mixed things. The depositary may deliver a share of the mixed things to each depositor which corresponds to the legal share belonging to the depositor, regardless of the consent of the other co-owners.

§ 901. Taking delivery of sent thing

If, upon acceptance of things sent to the depositary, the damage to or deficiency of the thing is apparent upon external inspection, the depositary shall promptly notify the depositor thereof and take all reasonable steps to enable the depositor to submit a claim for compensation for damage.

§ 902. Preservation of thing

(1) The depositary shall allow the depositor to examine the thing, take samples and perform acts necessary to preserve the thing. The depositary has the right to perform acts necessary to preserve the thing independently. If the stored things are mixed, the depositary is required to perform acts necessary for preservation.

(2) If, after deposit of the thing, the thing has changed or there is reason to believe that changes may occur which may cause the destruction of or damage to the thing or damage to the depositary, the depositary shall promptly notify the depositor thereof and request instructions from the depositor regarding operations with the thing. If a warehouse receipt has been issued, the depositary shall submit the notice regarding changes to the thing to the last legal possessor of the warehouse receipt who is known to the depositary.

(3) If the depositary does not receive any instructions in the case specified in subsection (2) of this section within a reasonable period of time, the depositary shall take reasonable measures independently. In particular, the depositary may sell the thing pursuant to subsections 125 (3)-(6) of this Act. If a warehouse receipt has been issued, the depositary shall notify the last legal possessor of the warehouse receipt who is known to the depositary of the sale.

§ 903. Insurance and storage of thing with third party

(1) At the request of the depositor, the depositary shall insure the thing. If the depositor is a consumer, the depositary shall inform the depositor of the possibility of requesting that the depositary insure the thing.

(2) The depositary may store the thing with a third party only if expressly permitted to do so by the depositor.

§ 904. Cancellation of storage contract and duration of storage

(1) If the storage contract is entered into for an unspecified term, either the depositor or depositary may cancel the contract by giving one month's advance notice. If the depositor or depositary has good reason to cancel the contract, the contract may be cancelled without adhering to the term for advance notice.

(2) The depositor may reclaim the thing at any time.

(3) The depositary may claim withdrawal of the thing after expiry of the agreed storage period or after expiry of the storage contract. If the depositary has good reason, the depositary may demand that the depositor withdraw the thing before expiry of the storage period.

(4) If a warehouse receipt has been issued, the depositary shall notify the last legal possessor of the warehouse receipt who is known to the depositary of cancellation of the contract and of a claim for withdrawal of the thing.

§ 905. Liability for loss of or damage to thing

The depositary shall compensate for any damage caused by loss of or damage to the thing if the damage is caused in the time between acceptance of the thing for storage and delivery of the thing. The depositary shall also be liable if the depositary stores the thing with a third party.

§ 906. Expiry of claims

(1) The limitation period for claims arising from a storage contract shall be one year. The limitation period for claims for compensation for damage caused intentionally or due to gross negligence shall be three years.

(2) The limitation period for claims specified in subsection (1) of this section shall commence as of the date of expiry of the contract. If the thing is lost, the limitation period shall commence as of the date on which the depositary notifies the depositor of the loss or, if a warehouse receipt has been issued, as of delivery of the warehouse receipt to the last legal possessor who is known to the depositary.

(19.11.2003 entered into force 27.12.2003 - RT I 2003, 78, 523)

(3) If the depositor is a consumer, any agreement which derogates from the provisions of subsections (1) and (2) of this section to the detriment of the depositor is void.

§ 907. Right of security of depositary

(1) The depositary has the right of security regarding the stored thing in order to secure all claims arising from the storage contract and claims arising from earlier contracts of carriage, forwarding contracts and storage contracts entered into with depositors. The right of security also extends to claims arising from insurance contracts entered into regarding the stored thing and the accompanying documents of the thing.

(2) If a warehouse receipt has been issued regarding the thing, only those claims of the depositary which arise from the warehouse receipt or of which the possessor of the warehouse receipt knew or should have known are secured by the right of security specified in subsection (1) of this section. The provisions of this subsection do not apply if the warehouse receipt is in the possession of the depositary.

(3) The right of security continues until the thing is in the possession of the depositary, in particular until the depositary can dispose of the thing on the basis of a bill of lading or a warehouse receipt.

§ 908. Warehouse receipt

(1) After acceptance of the thing for storage, the depositary may issue a warehouse receipt concerning the obligation to deliver, which shall contain the following information:

1) the place and date of issue of the warehouse receipt;

2) the name and address of the depositor;

3) the name and address of the depositary;

4) the place and date of storage;

5) a general description of the nature of the thing and the type of packaging, and, in the case of a dangerous thing, markings pursuant to the requirements established for such thing or, in the absence of such requirements, their generally recognised description;

6) the number of packages and their special marks and numbers;

7) the gross weight of the thing or the quantity expressed in other units of measurement;

8) if the stored things are mixed, a notation thereon.

(2) The warehouse receipt may contain other information which the depositary deems necessary.

(3) The depositary shall sign the warehouse receipt. The signature may be replaced by a clip-mark.

§ 909. Legal effect of warehouse receipt

(1) A warehouse receipt is a document of title which grants the legal possessor of the warehouse receipt the right to demand delivery of a stored thing from the depositary.

(2) The rights and obligations of the depositary and the legal possessor of the warehouse receipt shall be determined pursuant to the warehouse receipt. The storage contract shall prevail in the relationship between the depositary and depositor even if a warehouse receipt has been issued.

(3) If a warehouse receipt has been issued, it is presumed that the thing and the packaging thereof will be accepted by the depositary as described in the warehouse receipt if the description concerns the external condition of the thing, the number of stored packages and their special marks and numbers.

(4) If the depositary has checked the weight of the stored things or other information concerning the quantity of the stored items or if the content of the stored packages and the results of the checks are entered in a warehouse receipt, it is presumed that the weight, quantity and content conform to the information in the warehouse receipt upon acceptance of the thing.

(5) Upon delivery of a warehouse receipt to a third party, the depositary shall not rely on the fact that the information set out in the warehouse receipt and specified in subsections (3) and (4) of this section is incorrect unless, upon receipt of the warehouse receipt, the third party knew or should have known that the information set out in the warehouse receipt was incorrect.

(6) If the depositary has accepted the thing for storage, the delivery of a warehouse receipt to the person who is entitled to reclaim the thing pursuant to the warehouse receipt has the same meaning as transfer of the possession of the thing.

§ 910. Delivery of thing in exchange for returning warehouse receipt

(1) If a warehouse receipt has been issued, the depositary is required to deliver the thing only if the warehouse receipt is returned to the depositary. A notation concerning receipt of the thing shall be made on the warehouse receipt. If the stored thing is partially delivered, the depositary is required to deliver the part only if the depositary is permitted to make a corresponding signed notation on the warehouse receipt.

(2) The depositary shall compensate the legal possessor of the warehouse receipt for

any damage caused by delivery of the thing by the depositary without demanding the return of the warehouse receipt or making a notation on the warehouse receipt.

Division 3

Deposit of Thing in Accommodation Establishments

§ 911. Liability of keeper of accommodation establishment

(1) A person (the keeper of an accommodation establishment) who is in the business of accommodating other persons (guests) shall compensate guests for any damage arising from the loss of, damage to or destruction of things brought into the premises of the accommodation establishment and for any damage arising from the death of or bodily injury or physical harm to a guest which is caused by the defects of the structure, the land under the structure or the equipment or constructions of the accommodation establishment.

(2) The following things are deemed to have been brought into an accommodation establishment:

1) things which are in the accommodation establishment or are in a place outside the accommodation establishment recommended by the keeper of the accommodation establishment or are in a place generally intended therefor or are otherwise taken into custody by the keeper of the accommodation establishment at the time when the premises used for accommodation are being used by the guest;

2) things which are taken into custody by the keeper of the accommodation establishment within a reasonable period of time before or after the time when the premises are used by the guest.

(3) Persons who according to the circumstances could be presumed by guests to be employees of the keeper of an accommodation establishment are also deemed to be persons for whom the keeper of the accommodation establishment is liable.

(4) The provisions of this Division also apply to the deposit of things in sanatoriums, places of public entertainment, ships, swimming pools, boarding houses, restaurants and other similar places.

§ 912. Limitations on liability

(1) The keeper of an accommodation establishment shall not be liable for damage arising from damage to, destruction of or loss of a thing, regardless of the legal basis of the claim, if the damage is caused by:

1) the guest or a person accompanying or visiting the guest or a person for whom the

guest is responsible;

2) the special nature of the things;

3) *force majeure*.

(2) The keeper of an accommodation establishment shall not be liable pursuant to subsection 911 (1) of this Act for damage caused to the vehicle of a guest, things left in a vehicle and live animals of a guest, unless the keeper of the accommodation establishment has taken the vehicle or animal into the custody thereof in a manner from which it can be presumed that the intention of the keeper of the accommodation establishment to be liable for any damage caused to the vehicle or animal.

§ 913. Extent of liability of keeper of accommodation establishment

(1) The keeper of an accommodation establishment shall be liable for each guest in an amount of up to one hundred times the cost of accommodation for one day, but not exceeding 100 000 kroons or, in the case of loss of, damage to or destruction of money, securities or valuables, not exceeding 50 000 kroons.

(2) The limitations on liability specified in subsection (1) of this section do not apply if things are lost, damaged or destroyed due to the fault of the keeper of an accommodation establishment. Neither do the limitations on liability specified in subsection (1) of this section apply if damage is caused to things which are taken into custody by the keeper of an accommodation establishment or if the keeper of an accommodation establishment has unjustifiably refused to take these things into custody.

(3) The keeper of an accommodation establishment is required to take the money, securities and valuables of guests into custody unless they are excessively valuable taking into consideration the size or category of the accommodation establishment or if their deposit would be too burdensome on the keeper of the accommodation establishment. The keeper of the accommodation establishment may demand that money, securities and valuables be handed over in a closed or sealed container.

§ 914. Expiry of right to claim compensation for damage

The right to demand compensation for damage which belongs to a guest pursuant to § 911 of this Act terminates if the guest fails to notify the keeper of the accommodation establishment of the loss or destruction of or damage to a thing promptly after becoming aware thereof. The right to demand compensation for damage does not terminate if the thing was taken into custody by the keeper of the accommodation establishment or if the loss or destruction of or damage to the thing is caused through the fault of the keeper of the accommodation establishment.

§ 915. Right of security of keeper of accommodation establishment

The keeper of an accommodation establishment has the right of security regarding things brought into the premises by guests. The claims of the keeper of the accommodation establishment arising from the accommodation and services provided to guests and from other expenses related to the stay of guests in the accommodation establishment shall be secured by the right of security. The provisions concerning the right of security of lessors in the case of lease contracts apply correspondingly.

§ 916. Mandatory nature of provisions

Any agreement which precludes or limits the liability of the keeper of an accommodation establishment in respect of a guest as compared to the provisions of this Division is void.

Part 9

Securities

Chapter 46

General Provisions

§ 917. Definition of security

(1) A security is any instrument to which a patrimonial right is attached in a manner which precludes the exercise of the right without the instrument.

(2) In the cases provided by law, rights which are expressed and transferred only by the making of a registry entry are also deemed to be securities. Unless otherwise provided by this Act, the provisions concerning rights contained in this Act and the Law of Property Act do not apply to such rights.

(22.04.2004 entered into force 01.05.2004 - RT I 2004, 37, 255)

§ 917[1]. Pledging of securities upon provision of financial collateral

(1) If book entry securities specified in subsection 917 (2) of this Act and § 2 of the Securities Market Act (RT I 2001, 89, 532; 2002, 23, 131; 63, 387; 102, 600; 105, 612; 2003, 81, 544; 88, 591) are encumbered on the basis of a financial collateral arrangement specified in § 314[1] of the Law of Property Act, the registrar of the securities register is required to

maintain records on the securities such that the securities subject to financial collateral are separated from other securities held in the account of the pledgor.

(2) With regard to securities encumbered with financial collateral, the registrar of the register of the corresponding securities shall:

1) only fulfil the orders of the pledgee as of the date of entry into force of the irrevocable right to dispose of the securities encumbered with financial collateral granted to the pledgee and communicated to the registrar of the securities register by the pledgor;

2) fulfil the joint orders of the pledgor and pledgee until the date specified in clause 1) of this subsection.

(22.04.2004 entered into force 01.05.2004 - RT I 2004, 37, 255)

§ 918. Types of securities

(1) A bearer security is a security which grants the holder of the security the right to demand performance of an obligation arising from the security or to exercise any other right arising from the security.

(2) A negotiable security is a security which grants the person indicated on the security or another person ordered thereby the right to demand performance of an obligation arising from the security or to exercise any other right arising from the security. If the name of the person entitled on the basis of the security is indicated on the security, the security is presumed to be an order security.

(3) A registered security is a security which grants the person indicated on the security the right to demand performance of an obligation arising from the security or to exercise any other right arising from the security, and which is not an order security.

§ 919. Performance of obligations arising from securities

(1) A person obligated on the basis of a security shall perform the obligation only if the security is transferred to the person. A person obligated on the basis of a security shall not demand transfer of the security if the person is to perform other obligations on the basis of the security.

(2) An obligation arising from a registered security shall be performed for the benefit of the person who holds the security and proves that the security is issued in the name of the person and who transfers the security.

(3) An obligation arising from an order security shall be performed for the benefit of the person who holds the security and proves that the security is issued in the name of the person or transferred thereto by means of an endorsement, and who transfers the security.

(4) If a person obligated on the basis of a security performs the obligation in good faith for the benefit of the person entitled on the basis of the security, the obligation is deemed to have been performed even if the person for whose benefit the obligation is performed is not the actual obligee.

(5) If a person obligated on the basis of a security performs the obligation for the benefit of a person who does not prove that the person is the person indicated on the registered or order security or, in the case of an order security, that the security has been transferred to the person by means of an endorsement, the person obligated on the basis of the security is not released from the obligation to perform for the benefit of the person actually entitled on the basis of the security.

§ 920. Restrictions on defences by person obligated on basis of security

(1) A person obligated on the basis of a bearer security or order security may set up only the following defences against a claim arising from the security:

1) defences against the validity of the security;

2) defences arising from the security itself;

3) defences which the person obligated on the basis of the security may personally set up against the person entitled on the basis of the security.

(2) The person obligated on the basis of a security may set up defences, which do not arise from the security itself but from the relations of the obligated person with persons previously entitled on the basis of the security, against a claim of a person entitled on the basis of the security, only if the person entitled on the basis of the security knowingly damaged the interests of the person obligated on the basis of the security upon acquisition of the security.

§ 921. Transfer of security

(1) In order to transfer a right arising from a bearer security or to encumber the right with a usufruct or to the pledge the right, the security shall be transferred pursuant to the provisions concerning the transfer of movables.

(2) In order to transfer a right arising from an order security, the transferor shall, in addition to transferring the security, write an endorsement on the security or the slip attached thereto (the allonge).

(3) A right arising from a registered security shall be transferred pursuant to the provisions concerning the transfer of the corresponding right, concurrently with the transfer of the security. A right arising from a registered security shall be transferred by a written contract on transfer unless agreed otherwise.

(4) Upon the transfer of a security by an endorsement, the rights arising from the security for the person writing the endorsement (the endorser) shall transfer to the transferee unless the security or endorsement indicates otherwise. The provisions concerning bills of exchange apply to the writing of an endorsement on a security, to certification of the rights of the person entitled on the basis of the security and to acquisition of a security in good faith by means of endorsement.

(5) If a security issued in order to secure performance of an imperfect obligation is transferred, the new holder who has acquired the security in good faith may exercise the rights arising from the security.

§ 922. Alteration of type of security

The issuer of a security may alter the type of the security only with the consent of all persons obligated or entitled on the basis of the security, whereupon such consent shall be written on the security itself or on an allonge.

§ 923. Destruction or loss of security

(1) If a bearer security is no longer suitable for use due to damage or for another similar reason, the holder may demand that the issuer of the security issue a new security if the holder returns the unsuitable security and the content and special characteristics of the security are identifiable.

(2) In the case of loss or destruction of or damage to a security and pursuant to the provisions of civil procedure, a demand may be placed for the security to be declared invalid in a court proceeding to void and restore bearer debt instruments.

(3) At the request of a holder whose security has been lost, destroyed or damaged, the issuer of the security is required to provide the holder with information necessary for initiating a proceeding to void and restore bearer debt instruments and for suspending payments and to issue the necessary certificates.

(4) If a bearer security is declared invalid, the person who filed the corresponding application may demand that the issuer of the security issue a new security to replace the security which was declared invalid.

(5) A person submitting a request specified in subsection (1), (3) or (4) of this section shall bear the expenses relating to the provision of certificates and the issue of a new security and other expenses relating to the satisfaction of the request and, if the issuer of the security so requires, pay such expenses in advance.

§ 924. Limitation period for claims arising from securities

(1) The limitation period for a claim arising from a security shall be three years as of the due date for the performance of the obligation.

(2) If a security is presented to the person obligated on the basis of the security for the performance of an obligation arising from the security, the limitation period shall be one year as of expiry of the term during which the security can be presented for the performance of an obligation arising from the security.

(3) The issuer of a security may indicate the limitation period and the commencement date thereof on the security differently than provided for in subsections (1) and (2) of this section.

(4) In the case of a proceeding to void and restore bearer debt instruments which is initiated for the purpose of declaring a security invalid, the running of the limitation period shall be suspended with regard to the person who files the application for the security to be declared invalid. In such case, suspension terminates upon termination of the proceeding to void and restore bearer debt instruments.

Chapter 47

Bill of Exchange

Division 1

General Provisions

§ 925. Draft

(1) A draft is an order security by which the drawer orders the mandatary (the drawee) to pay a determinate sum of money to the person entitled on the basis of and specified in the draft at the maturity specified in the draft (payment of draft). The order shall be unconditional.

(2) A draft shall contain the following information:

1) the term “bill of exchange” in the language of the instrument;

2) an unconditional order to pay a determinate sum of money (the amount of the bill of exchange);

3) the name of the drawee;

4) the maturity;

5) the place of payment;

6) the name of the person to whom payment is to be made;

7) the date and place of the drawing of the draft;

8) the signature of the drawer.

(3) A draft may be drawn payable to drawer's order or it may be drawn on the drawer. A draft may be drawn for account of a third party.

§ 926. Promissory note

(1) A promissory note is an order security by which the drawer of the promissory note unconditionally undertakes to pay the amount of the promissory note to the person entitled on the basis of and specified in the note at the maturity specified in the note.

(2) A promissory note shall contain the information provided for in clauses 925 (2) 1) and 4)–8) of this Act and an unconditional undertaking by the drawer of the promissory note of the promissory note to pay the amount of the note.

§ 927. Formal deficiencies in bills of exchange

(1) An instrument is not deemed to be a bill of exchange if any of the requirements specified in subsection 925 (2) of this Act is wanting in the instrument and an instrument is not deemed to be a promissory note if any of the requirements specified in subsection 926 (2) of this Act is wanting.

(2) An instrument in which only the maturity is not specified is still deemed to be a bill of exchange. In such case, the bill of exchange is payable at sight.

(3) A bill of exchange in which the place of payment is not specified is payable at the place specified beside the name of the drawer.

(4) If a drawer knowingly leaves some of the information specified in subsection 925 (2) or 926 (2) of this Act out of a bill of exchange (a bill of exchange in blank), the drawer shall not subsequently set up defences against the holder of the bill based on the fact that the bill was completed otherwise than agreed between the drawer and the original holder of the bill. This does not apply if, upon acquisition of the bill of exchange, the holder knew or should have known that the bill was completed otherwise than agreed with the original holder of the bill.

§ 928. Parties to bill of exchange

(1) The parties to a bill of exchange are the persons who issue the bill, accept the bill or endorse the bill or give an aval to the bill.

(2) A person who was obligated on the basis of a bill of exchange before a party to the bill of exchange is an endorser with regard to the party.

(3) A person who becomes obligated on the basis of a bill of exchange after a party to the bill of exchange is a subsequent endorser with regard to the party.

§ 929. Permissible maturities

(1) A bill of exchange may be drawn payable:

1) at sight (a bill of exchange at sight);

2) at a fixed period after sight (a bill of exchange payable at a fixed period after sight);

3) at a fixed period after the date of issue of the bill (a bill of exchange payable at a fixed period after date);

4) at a fixed date (bill of exchange payable on a fixed day).

(2) Bills of exchange at maturities other than those provided for in subsection (1) of this section or at several maturities are void.

§ 930. Bill of exchange at sight

(1) A bill of exchange payable at sight shall be presented for payment within one year as of the date of issue of the bill unless the drawer has specified a different term in the bill of exchange. An endorser of a bill of exchange may abridge the term for presentment provided by law or specified by the drawer.

(2) If a drawer has prescribed in a bill of exchange at sight that the bill may not be presented for payment before a specified date, the term for presentment shall begin on that date.

§ 931. Draft payable at fixed period after sight

(1) The term for payment of a draft payable at a fixed period after sight commences to run as of the date indicated in the acceptance of the draft or as of the date on which a protest is drawn up.

(2) If no date is indicated in the acceptance of a draft and no protest is drawn up, the draft is deemed to have been accepted on the last day of the term for presentment for ac-

ceptance.

§ 932. Promissory note payable at fixed period after sight

(1) The term for payment of a promissory note payable at a fixed period after sight commences to run as of the date on which a stipulation for presentment is made on the promissory note or, in the case specified in subsection (3) of this section, as of the date on which a protest is drawn up.

(2) A promissory note payable at a fixed period after sight shall be submitted to the drawer for a stipulation for presentment to be made within one year as of the date of issue of the promissory note unless the drawer has specified a different term in the promissory note. An endorser may abridge the term for presentment for payment provided by law or specified by the drawer of the promissory note.

(3) A stipulation for presentment shall contain the date of the stipulation and the drawer shall sign the stipulation. If the drawer of a promissory note refuses to write a stipulation for presentment, such refusal shall be confirmed by a protest.

§ 933. Payment of interest on bill of exchange

(1) In the case of a bill of exchange at sight or a bill of exchange payable at a fixed period after sight, the drawer may stipulate that the amount of the bill shall bear interest. In the case of any other bill of exchange, the obligation to pay interest is deemed not to be written on the bill.

(2) The rate of interest shall be specified in the bill of exchange. If the rate of interest is not specified in the bill of exchange, the obligation to pay interest is deemed not to have been written on the bill.

(3) In the case specified in subsection (1) of this section, interest shall be calculated as of the date of issue of the bill of exchange unless the drawer has specified a different date in the bill.

§ 934. Validity of signatures

If a bill of exchange bears a forged signature, the obligations of the other persons who signed it are none the less valid. If, pursuant to the provisions of civil law, a person who has signed a bill of exchange cannot bear the obligations arising from the signature, the obligations of the other persons who have signed the bill are none the less valid.

§ 935. Signing bill of exchange without right of representation

If a person signs a bill of exchange in the name of another person as the representative of the person, the signatory shall be liable for performance of the obligations arising from the bill even if he or she did not have the right to sign the bill of exchange in the name of the other person or if he or she acted in excess of his or her right of representation. If the signatory pays the bill of exchange, the signatory shall have the same rights as the person for whom the signatory signed the bill without or in excess of the right of representation would have had in the event of paying the bill of exchange.

§ 936. Parts of draft

(1) A draft may be drawn in a set of several parts.

(2) The text of each part shall contain the number of the part. If a number is not indicated, each part is deemed to be a separate draft.

(3) Upon payment made on one part of a set, the rights arising from all parts shall expire.

(4) If parts of a set are transferred to different persons, the endorser and the subsequent endorsers shall be liable on all of the parts which bear their signature and have not been restored.

§ 937. Liability of drawers

(1) The drawer of a draft shall be liable for both acceptance and payment of the draft. The drawer may preclude liability for acceptance by writing a corresponding stipulation on the draft. Every stipulation to release the drawer from liability for payment of the draft is deemed not to be written on the draft.

(2) The drawer of a promissory note undertakes to pay the note on the date of maturity. Upon failure to pay the promissory note on the date of maturity, the holder of the note may file a claim specified in subsection 970 (1) of this Act against the drawer.

§ 938. Limitation period for claims arising from bills of exchange

(1) The limitation period for claims arising from a bill of exchange against the acceptor shall be three years as of the date of maturity.

(2) The limitation period for claims of the holder of a bill of exchange against the endorser or the drawer shall be one year as of the date on which a protest against the bill of exchange is drawn up if the protest is drawn up within the specified period of time or one year as of the date of maturity in the case of release from a protest.

(3) The limitation period for claims of an endorser against another endorser or against

the drawer shall be six months as of the date on which the endorser pays the bill of exchange or six months as of the date on which an action is filed against the endorser.

§ 939. Unjustified enrichment

(1) If performance of an obligation arising from a bill of exchange for the drawer or the acceptor cannot be claimed due to expiry of the limitation period for the claim or due to failure to perform an act necessary to file a claim arising from the bill, the holder of the bill of exchange may file a claim arising from unjustified enrichment against the drawer or the acceptor if the requirements for filing a claim are met.

(2) The limitation period for a claim arising from unjustified enrichment specified in subsection (1) of this section shall be three years as of the expiry of claims arising from the bill of exchange or as of the date when performance of obligations arising from the bill can no longer be claimed.

(3) A claim arising from unjustified enrichment specified in subsection (1) of this section shall not be filed against an endorser whose obligation arising from the bill of exchange has expired.

Division 2

Transfer of Bill of Exchange

§ 940. Transferability of bill of exchange

(1) A bill of exchange may be transferred to another person, including another party to the bill, by means of an endorsement unless the drawer has expressly precluded transferability by writing a stipulation "*üleandmispealdise tegemise õiguseta*" or "*indosseerimisõiguseta*" [without the right of endorsement] or any other equivalent stipulation on the bill.

(2) If the drawer of a bill of exchange writes a stipulation specified in subsection (1) of this section on the bill, the bill may be transferred as a registered security.

§ 941. Endorsement

(1) An endorsement shall be written on a bill of exchange or on a slip affixed thereto (allonge) and shall be signed by the endorser.

(2) An endorsement shall be unconditional. Any condition contained in an endorsement is deemed not to be written on the bill of exchange.

(3) An endorsement for partial transfer of the rights and obligations expressed in a bill of exchange is void.

§ 942. Endorsement in blank

(1) An endorsement may leave the beneficiary unspecified (an endorsement in blank). An endorsement in blank is valid even if it contains only the signature of the endorser written on the back of the bill of exchange or on the allonge.

(2) In the case of an endorsement in blank, the holder of the bill of exchange may:

1) fill in the blank either with the name of the holder or the name of another person;

2) re-endorse the bill in blank, or to another person;

3) transfer the bill to a third party without filling up the blank, and without endorsing the bill.

§ 943. Certification of rights of holder of bill of exchange

(1) The possessor of a bill of exchange is deemed to be the lawful holder of the bill if the possessor certifies the right thereof through a series of endorsements successive in time and in person (an uninterrupted series of endorsements), even if the last endorsement is in blank. Cancelled endorsements are deemed not to be written on the bill.

(2) If an endorsement in blank is followed by another endorsement, the person who signed this last endorsement is deemed to have acquired the bill by the endorsement in blank.

(3) If a bill of exchange is stolen from the former holder or lost or if the holder of the bill is dispossessed of the bill in any other manner against the will of the holder, the possessor of the bill is not deemed to be the lawful holder of the bill if the possessor was or should have been aware of such circumstances upon acquisition of the bill, and the possessor is required to give up the bill to the former holder regardless of the uninterrupted series of endorsements.

§ 944. Liability of endorser

(1) An endorser shall be liable for acceptance and payment of the bill of exchange unless the endorser has made an express stipulation on the bill indicating that the endorser is not liable.

(2) An endorser may prohibit any further endorsement by making a corresponding stipulation on the bill. In such case, the endorser shall not be liable to the persons to whom the

bill is subsequently endorsed.

§ 945. Endorsement by procuration

(1) If an endorsement contains a statement "*volitused*" [by procuration] or "*inkassoks*" [for collection] or any other similar statement implying the mandate of the acquirer of the bill of exchange (an endorsement by procuration), the acquirer of the bill may exercise all rights arising from the bill of exchange on behalf of the endorser. In such case, the acquirer of the bill of exchange may endorse the bill only by means of a new endorsement by procuration.

(2) In the case specified in subsection (1) of this section, the party to the bill of exchange may only set up such defences against the person who acquired the bill on the basis of an endorsement by procuration which the party may set up against the endorser.

§ 946. Pledge endorsement

If an endorsement contains a written declaration implying a pledge (a pledge endorsement), the holder of the bill of exchange may exercise all rights arising from the bill as the pledgee. An endorsement by the pledgee only has the legal consequences of an endorsement by procuration

§ 947. Endorsement after maturity

(1) An endorsement after protest for non-payment or after expiry of the term for protest is deemed to operate as an assignment of a right of claim specified in § 970 of this Act to the person to whom the bill of exchange is endorsed.

(2) An endorsement without a date is presumed to have been placed on the bill of exchange before expiry of the term for protest.

Division 3

Aval

§ 948. Aval

(1) The obligation of a party to a bill of exchange to pay the bill may be guaranteed by an aval as to the whole or part of its amount. An aval may also be given by a person who has already signed the bill.

(2) An aval is given either on the bill or on an allonge. An aval is expressed by the words "*käendan*" [good as aval] or by any other equivalent expression signed by the avaliseur.

(3) A separate signature on the face of a bill of exchange is deemed to be an aval by the signatory unless the signatory is the drawee or the drawer of the bill.

(4) If an aval does not specify the person for whose account it is given, the aval is deemed to be given for the drawer.

§ 949. Liability of avaliseur

(1) The avaliseur and the person for whose account the aval is given shall be solidarily liable.

(2) The avaliseur shall be liable also if the obligation which is guaranteed by the aval is void for any reason other than defect of form of the bill or the endorsement.

(3) The avaliseur who pays the bill of exchange shall acquire all rights arising out of the bill against the person guaranteed and against all persons who pursuant to the bill are liable to the avaliseur.

Division 4

Acceptance of Draft

§ 950. Presentment for acceptance

(1) A draft may be presented to the drawee for acceptance until maturity. A draft may be presented for acceptance by the holder or possessor of the draft or by the person who exercises actual control over the draft in the household or enterprise of the holder according to the orders thereof.

(2) A draft shall be presented for acceptance at the place of business of the drawee or, in the absence of a place of business, at the residence or seat of the drawee.

§ 951. Legal consequences of acceptance

(1) By accepting a draft, the drawee undertakes to pay the draft at the maturity of the draft.

(2) If an acceptor fails to pay the draft at the maturity thereof, the holder of the draft,

even if the holder is the drawer, may file a claim on the draft against the acceptor to the extent provided for in subsection 970 (1) or § 974 of this Act.

§ 952. Term for presentment for acceptance

(1) A draft payable at a fixed period after sight shall be presented for acceptance within one year as of the date of issue of the draft unless the drawer has specified a different term in the draft. An endorser may abridge the term for presentment for acceptance provided by law or specified by the drawer of the draft.

(2) The drawer of a draft other than a draft payable at a fixed period after sight may prescribe in the draft that it must be presented for acceptance and specify the term for presentment.

(3) Unless the drawer of a bill of exchange has prohibited presentment for acceptance, each endorser may prescribe that the bill must be presented for acceptance and specify the term for presentment.

§ 953. Prohibition on presentment for acceptance

(1) The drawer of a draft may prohibit presentment for acceptance, except in the case of a draft payable at a fixed period after sight or a bill of exchange payable in a locality other than the place of business, residence or seat of the drawee.

(2) The drawer of a bill of exchange may prescribe in the bill that it must not be presented for acceptance before a specified date.

§ 954. Form of acceptance

(1) An acceptance shall be indicated on a draft with the word "*aktseptitud*" [accepted] or any other equivalent expression and shall be signed by the drawee. The simple signature of the drawee on the face of the draft is also deemed to be an acceptance.

(2) In the case of a draft payable at a fixed period after sight or any other draft which must be presented for acceptance within the term specified in the draft, the acceptance shall be dated as of the date the acceptance is given. If the holder of the draft requires that the date of presentment for acceptance be indicated, the date on which the draft is presented for acceptance shall also be indicated in the acceptance.

(3) If, in the cases specified in subsection (2) of this section, an acceptance does not contain a date, the holder of the draft shall, within the term provided for in § 964 of this Act, protest the failure to indicate the date. Upon failure to submit a protest, the holder loses the right of claim specified in § 970 of this Act against the endorsers and the drawer.

§ 955. Restrictions on acceptance

(1) An acceptance shall be unconditional but the drawee may expressly stipulate in the acceptance that the drawee accepts only a part of the amount of the bill, indicating the accepted amount.

(2) If an acceptance contains a clear modification to the tenor of the bill regarding anything other than the amount payable, such derogation is deemed to be a refusal to accept. Nevertheless, the acceptor shall be liable according to the terms of the acceptance.

§ 956. Place of payment other than place of business, residence or seat of drawee

(1) If a drawer indicates in a draft a place of payment other than the place of business, residence or seat of the drawee without specifying the third party at whose address payment must be made, the drawee may indicate such third party in the acceptance. In the absence of such indication, the acceptor is deemed to have undertaken to pay the draft at the place of payment.

(2) Upon acceptance of a draft payable at the place of business, residence or seat of the drawee, the drawee may indicate a more exact address in the place of payment where payment is to be made.

§ 957. Cancellation of acceptance

(1) The drawee of a bill of exchange is deemed to have refused acceptance if the drawee cancels the acceptance before restoring the bill to the person presenting the bill for acceptance. Cancellation of the acceptance is presumed to have taken place before the bill was restored.

(2) Regardless of the provisions of subsection (1) of this section, the drawee of a bill of exchange shall be liable according to the terms of the acceptance to the holder and to the other parties to the bill to whom the drawee has given written notice of accepting the bill.

Division 5

Payment of Bill of Exchange

§ 958. Presentment for payment

(1) A bill of exchange payable on a fixed day, a bill of exchange payable at a fixed pe-

riod after date and a bill of exchange payable at a fixed period after sight shall be presented for payment either at maturity or during the two following working days.

(2) The presentment of a bill of exchange for offsetting to a person with the right to perform such offsetting as the economic activities of the person is deemed to be equivalent to presentment for payment.

§ 959. Giving up and partial payment of bill of exchange

(1) Upon payment of a bill of exchange, the drawee may require the holder to give up the bill and issue a receipt for payment.

(2) The holder of a bill of exchange shall not refuse partial payment. In the case of partial payment of a bill of exchange, the drawee may require the holder to make a notice of partial payment on the bill and issue a receipt for the payment.

§ 960. Consequences of payment

(1) Upon payment of a bill of exchange at maturity, the drawee's obligation to pay terminates.

(2) The holder of a bill of exchange is not required to accept payment of the bill before maturity. A drawee who pays the bill of exchange before maturity is not thereby released from the obligations arising from the bill.

(3) A drawee is not released from the obligation to pay if the drawee pays the bill of exchange intentionally or through gross negligence for the benefit of a person who is not entitled to accept the performance. Upon payment, the drawee is required to verify the uninterrupted series of endorsements but not the authenticity of the signatures of the endorsers.

§ 961. Deposit

If a bill of exchange is not presented for payment within the term specified in § 958 of this Act, a party to the bill may deposit the amount of the bill at the charge and risk of the holder pursuant to the procedure provided for in § 120 of this Act.

Division 6

Protest of Bill of Exchange

§ 962. Definition of protest of bill of exchange

(1) Protest of a bill of exchange is verification, by a public document (protest) issued by a notary or another person so entitled by law, of a proposal for acceptance or payment which has been made to the drawee but which the drawee has failed to perform.

(2) Protest for refusal to accept or pay a bill of exchange is the precondition for filing a claim specified in § 970 of this Act, unless otherwise provided by law or specified by the drawer.

(3) A bill of exchange protested for non-acceptance need not be presented for payment or protested for non-payment.

§ 963. Release from protest

(1) If a drawer, an endorser or an avaliseur has made a stipulation "*kuludeta regress*" [*retour sans frais*] or "*protestita*" [*sans protet*] or any other equivalent expression on the bill of exchange, the holder of the bill need not protest the bill upon non-acceptance or non-payment in order to file a claim specified in § 970 of this Act.

(2) If the stipulation specified in subsection (1) of this section is written by the drawer, the stipulation applies to all parties to the bill of exchange; if it is written by an endorser or an avaliseur, the stipulation applies only to the endorser or the avaliseur.

(3) If the holder of a bill of exchange protests the bill regardless of a stipulation indicating release from protest written by the drawer, the holder shall bear the expenses relating to the protest. If the stipulation was made by an endorser or an avaliseur, the expenses relating to the protest shall be recovered from all the parties to the bill of exchange solidarily.

§ 964. Terms for protests

(1) A protest for non-acceptance of a bill of exchange shall be drawn up within the term for presentment for acceptance specified in § 952 of this Act.

(2) A protest for non-payment of a bill of exchange shall be drawn up within two working days after maturity. A protest for non-payment of a bill of exchange at sight shall be drawn up within the term for presentment for payment specified in § 930 of this Act.

§ 965. Content of protest

The official who draws up a protest shall set out the following information in the protest:

1) the names of the persons in whose interests and against whom the protest is drawn up;

2) a notice indicating that performance of the obligations arising from the bill of exchange has been claimed from the person against whom the protest is filed but the person has failed to perform the obligations or his or her whereabouts cannot be ascertained;

3) information indicating where and when the claim specified in clause 2) of this section was submitted or submission was attempted without result;

4) a notice concerning partial payment if the bill of exchange has been paid in part.

§ 966. Form of protest

(1) A protest shall be written either on the bill or on an allonge.

(2) A protest shall immediately follow the last entry on the back of the bill of exchange or on the allonge or, in the absence of previous entries, shall begin at one edge of the back of the bill of exchange or the allonge.

(3) If a protest is drawn up against a bill of exchange issued in parts, it is sufficient to write the protest on one of the parts. The other parts or a copy of the bill of exchange shall contain a notice indicating the part on which the protest is written. The provisions of subsection (2) of this section apply to such notice, *mutatis mutandis*.

(4) If a bill of exchange is protested due to partial acceptance, a copy shall be made of the bill and the protest shall be written on the copy or on the allonge of the copy. The copy shall also contain the endorsements and other notices written on the bill of exchange.

§ 967. Protest filed against several persons or repeatedly against same person

If one and the same obligation arising from a bill of exchange is to be performed by several persons or repeatedly by one and the same person, it is sufficient to draw up one protest.

§ 968. Payment of bill of exchange to person drawing up protest

(1) A bill of exchange may be paid by depositing the amount of the bill with the official who draws up the protest.

(2) Any preclusion of the right to pay a bill of exchange in the manner specified in subsection (1) of this section is void.

§ 969. Copies of protest

(1) The official who draws up a protest shall have a notarised copy of the protest made

and shall preserve the notarised copy.

(2) In the event of the loss or destruction of a protest, a copy specified in subsection (1) of this section shall serve as the protest.

Division 7

Claims Arising from Non-acceptance or Non-payment

§ 970. Claims of holder of bill of exchange in case of non-payment

(1) In the case of non-payment of a bill of exchange, the holder may require the following from the endorser, drawer or other parties to the bill after maturity:

1) the amount of the unaccepted or unpaid bill of exchange with interest;

2) a penalty for late payment in the amount provided for in § 94 of this Act, as of the date of maturity;

3) compensation for expenses relating to drawing up a protest and to notices given, and other similar expenses;

4) compensation to the extent of 0.33 per cent of the amount specified in clause 1) of this subsection.

(2) The prerequisite for the right of claim specified in subsection (1) of this section to be created is protesting the bill of exchange unless otherwise provided by law.

(3) If a claim specified in subsection (1) of this section is filed on the basis of § 963 of this Act before maturity, the amount of the bill of exchange shall be reduced by the interest payable for the period from the filing of the claim to the date of maturity in the amount provided for in § 94 of this Act, calculated according to the interest rate applicable on the date on which the claim is filed.

§ 971. Filing of claims before maturity

(1) The holder of a bill of exchange may make the claim specified in § 970 of this Act even before maturity in the event of:

1) total or partial non-acceptance of the bill of exchange;

2) the bankruptcy of the drawee or stoppage of payment on the part of the drawee or an execution proceeding conducted against the drawee without result;

3) the bankruptcy of the drawer of a non-acceptable bill of exchange.

(2) If the drawee of a bill of exchange has stopped performance of monetary obligations other than those arising from the bill of exchange or if an execution proceeding has been conducted against the drawee without achieving satisfaction of any of the claims against the drawee, the holder of the bill may still make a claim specified in § 970 of this Act if the bill of exchange has been presented to the drawee for payment and the non-payment has been protested.

§ 972. Giving notice of non-acceptance or non-payment

(1) The holder of a bill of exchange shall give notice of non-acceptance or non-payment of the bill to the immediate endorser of the holder and to the drawer of the bill within four working days after the date of protest or, in the case provided for in subsection 963 (1) of this Act, within four working days after non-acceptance or non-payment. An endorser who receives such notice shall notify the immediate endorser thereof within the two working days following the date of receipt of the notice, indicating the names and addresses of those who gave the previous notices, and so on through the series until the drawer of the bill of exchange is reached.

(2) The notice specified in subsection (1) of this section shall, in addition to the drawer and the endorser, be given within the same term to the avaliseur of the person.

(3) If an endorser has not specified the address thereof or if the address is not legible, the notice specified in subsection (1) of this section shall be given to the immediate endorser of the endorser.

(4) The notice specified in subsection (1) of this section is deemed to have been given even by simply returning the bill of exchange.

(5) A person who fails to give notice within the specified term does not lose the right of claim specified in § 970 of this Act but shall be liable for the damage caused at the fault of the person to the extent of the amount of the bill.

§ 973. Solidary liability of parties to bill of exchange

(1) The parties to a bill of exchange shall be solidarily liable to the holder of the bill for satisfaction of a claim specified in § 970 of this Act.

(2) Previous endorsers and the acceptor shall be solidarily liable to a party to a bill of exchange who pays the bill for satisfaction of a claim specified in § 970 of this Act.

§ 974. Right of claim of party to bill of exchange who pays bill

The party to a bill of exchange who pays the bill may recover the following from previous endorsers:

1) the entire amount of the bill of exchange paid by the party;

2) interest on the paid amount of the bill of exchange at the rate provided for in § 94 of this Act, as of the date of payment of the amount of the bill;

3) compensation for expenses incurred;

4) compensation to the extent of 0.33 per cent of the amount specified in clause 1) of this section.

§ 975. Transfer of bill of exchange

(1) A party to a bill against whom a claim specified in § 970 of this Act has been filed or may be filed may, upon satisfaction of the claim, require that the protested bill of exchange be given up to the party with a receipt certifying acceptance of the amount paid on the basis of the claim.

(2) An endorser who has paid a bill of exchange may cancel the endorsement thereof and endorsements of subsequent endorsers on the bill.

§ 976. Claims arising from partial acceptance of draft

(1) A person against whom a claim specified in § 970 of this Act has been filed pursuant to a draft which has been partially accepted and who pays the sum in respect of which the draft has not been accepted may require the person who filed the claim to indicate such payment on the draft and issue of a corresponding receipt.

(2) A person who pays the amount in respect of which a draft has not been accepted may require a certified copy of the protested draft from the holder of the draft.

§ 977. Consequences of failure to adhere to terms

(1) The holder of a bill of exchange loses the rights thereof against all parties to the bill, except the acceptor, in the case of failure to adhere to the terms set for:

1) presentment of a bill of exchange at sight or a bill of exchange payable at a fixed period after sight for acceptance or payment;

2) drawing up a protest for non-acceptance or non-payment;

3) presentment of a bill of exchange for payment if the holder of the bill is released

from the obligation to protest the bill pursuant to § 963 of this Act.

(2) If the holder of a bill of exchange fails to present the bill for acceptance within the term set by the drawer, the holder loses the right of claim specified in § 970 of this Act unless it appears from the stipulation for the term that by setting the term the drawer only meant to preclude the liability thereof in the case of non-acceptance of the bill after the expiry of the term.

(3) A term contained in an endorsement may be relied upon only by the endorser.

§ 978. Failure to adhere to terms due to *force majeure*

(1) If a bill of exchange cannot be presented for acceptance or payment or protested within the specified term due to *force majeure*, the term is deemed to be extended until the *force majeure* ends. Facts which are purely personal to the holder or to the person authorised by the holder to present or protest the bill of exchange are not deemed to be *force majeure*.

(2) The holder of a bill of exchange shall immediately give notice of *force majeure* to the endorser of the holder and indicate the notice on the bill or on an allonge. The notice shall be dated and signed by the holder. In such case, the holder of the bill and the parties to the bill shall give their notices pursuant to the provisions of § 972 of this Act.

(3) When *force majeure* has ended, the holder of the bill of exchange shall immediately present the bill for acceptance or payment and, if necessary, protest the bill.

(4) If *force majeure* continues for more than thirty days after the maturity of a bill of exchange, a claim specified in § 970 of this Act may be filed without presenting the bill of exchange for acceptance or payment and without protesting the bill.

(5) In the case of a bill of exchange payable at sight or at a fixed period after sight, the term of thirty days provided for in subsection (4) of this section shall be calculated as of the date on which the holder of the bill notifies the endorser thereof of the *force majeure*, even if notification is given before expiry of the term for presentment of the bill for acceptance or payment. In the case of a bill of exchange payable at a fixed period after sight, the term of thirty days shall be extended by the period after sight specified on the bill.

Chapter 48

Cheque

Division 1

General Provisions

§ 979. Cheque

(1) A cheque is a security with which the drawer of the cheque orders a credit institution (the drawee of the cheque) to pay a specific sum of money (the amount of the cheque) to the person entitled on the basis of the cheque (the payee). The order shall be unconditional.

(2) A cheque shall contain the following information:

1) the term “cheque” in the language of the instrument;

2) an unconditional order to pay a specific sum of money;

3) the name of the drawee of the cheque;

4) the place of payment;

5) the date and place of issue of the cheque;

6) the name and signature of the drawer or, in the case of a legal person, the business name thereof and the name and signature of the representative.

§ 980. Formal deficiencies of cheque

(1) An instrument in which any of the requirements specified in subsection 979 (2) of this Act is lacking is not deemed to be a cheque.

(2) The provisions of subsection (1) of this section do not apply to instruments in which only the place of payment is not specified. In such case, the place of business of the drawee is deemed to be the place of payment.

§ 981. Drawee of cheque

(1) The drawee of a cheque may only be a credit institution in which the drawer has an account which the drawer may use on the basis of the cheque pursuant to an agreement with the drawee. Failure to adhere to the requirements provided for in this subsection shall not give rise to invalidity of the obligations arising from a cheque.

(2) A cheque shall not be drawn on the drawer.

(3) A cheque may be drawn for account of a third party if the third party has authorised the drawee of the cheque to pay the cheque.

§ 982. Payee

(1) A cheque may be drawn as a registered cheque, order cheque or bearer cheque.

(2) An order cheque shall specify the person to whom the cheque is to be paid. An order cheque may, but need not, contain an express stipulation on the right of endorsement.

(3) A registered cheque shall specify the person to whom the cheque is to be paid and the stipulation "*üleandmispealdise tegemise õiguseta*" [without the right of endorsement] or any other equivalent stipulation.

(4) A bearer cheque shall contain a stipulation that the cheque is to be paid to the bearer of the cheque. A cheque payable to a specified person but containing an additional stipulation "*või esitajale*" [or to bearer] or any other equivalent stipulation, or a cheque which does not specify the payee, is also deemed to be a bearer cheque.

(5) A cheque may be drawn payable to the drawer.

§ 983. Parties to cheque

The parties to a cheque are the drawer, the acceptor, the person giving an aval to the cheque and the endorser.

§ 984. Invalidity of stipulations on interest

Any stipulation on the cheque regarding the payment of interest is deemed not to be written on the cheque.

§ 985. Liability of drawer of cheque

The drawer of a cheque shall be liable for the payment of the cheque. Any stipulation to release the drawer from liability for payment of the cheque is deemed not to be written on the cheque.

§ 986. Application of provisions concerning bills of exchange

The provisions concerning bills of exchange contained in subsection 927 (4), §§ 934, 935, 941, 942 and 943, subsection 944 (2), §§ 945, 948, 949 and 950, subsection 954 (1), §§ 955 and 957, subsection 958 (2), § 959, subsection 962 (1) and §§ 963, 965, 966–969 and 972–975 of this Act apply to cheques, *mutatis mutandis*, unless otherwise determinable from the nature of the cheque. For the purposes of applying the provisions of §§ 963, 972 and 975 of this Act, the declaration specified in clause 1000 (2) 2) of this Act is deemed to

be equal to a protest.

Division 2

Transfer of Cheque

§ 987. Manner of transfer

(1) The provisions of this Act concerning the transfer of order securities apply to the transfer of order cheques, the provisions concerning the transfer of registered securities apply to the transfer of registered cheques and the provisions concerning the transfer of bearer securities apply to the transfer of bearer cheques.

(2) A cheque may also be transferred to the drawer of the cheque or any other party to the cheque.

§ 988. Liability of endorser

An endorser shall be liable for payment of the cheque unless the endorser has made an express stipulation on the cheque indicating that the endorser is not liable.

§ 989. Preclusion of acquisition of cheque in good faith

If a bearer cheque is stolen from the holder or lost or if the holder of the cheque is dispossessed of the cheque in any other manner against the will of the holder, the possessor of the cheque is not deemed to be the lawful holder of the cheque if the possessor was or should have been aware of such circumstances upon acquisition of the cheque, and the possessor is required to give up the cheque to the holder regardless of the uninterrupted series of endorsements.

§ 990. Endorsement after maturity

(1) An endorsement after protest or after submission of an application specified in clause 1000 (2) 2) of this Act or after expiry of the term for presentment is deemed to operate as an assignment of the right of claim specified in § 1000 of this Act to the person to whom the cheque is endorsed.

(2) If an endorsement is not dated, the endorsement is presumed to have been written on the cheque before the drawing up of a protest or submission of an application specified in clause 1000 (2) 2) of this Act or expiry of the term for presentment for payment.

Division 3

Payment

§ 991. Payment

(1) A cheque shall be paid upon presentment. Any other stipulation on payment is deemed not to be written on the cheque.

(2) If a cheque is presented for payment before the date of issue specified on the cheque, the cheque shall nevertheless be paid on the date for presentment for payment.

§ 992. Term for presentment for payment

(1) A cheque payable in the country of issue shall be presented for payment within eight days as of the date of issue specified on the cheque.

(2) A cheque payable in a country other than the country of issue shall be presented for payment within twenty days as of the date of issue specified on the cheque.

(3) Unless a cheque has been cancelled, the drawee of the cheque may also pay the cheque after the expiry of the term for presentment for payment.

§ 993. Acceptance of cheque and obligation to pay

(1) A drawee who has accepted a cheque is required to pay the cheque.

(2) If a drawee of a cheque refuses to accept the cheque, the holder of the cheque does not have the right of claim arising from non-acceptance specified in § 1000 of this Act against the parties to the cheque.

(3) In the case of non-payment of an accepted cheque, the holder of the cheque, even if the holder is the drawer, may make a claim on the cheque against the drawee of the cheque to the extent provided for in subsection 1000 (1) of this Act.

(4) If the drawer and the drawee of a cheque have entered into a contract regarding payment of the cheque, the drawee is liable to the drawer for payment of the cheque according to the contract.

§ 994. Cancellation of cheque

A drawer may cancel a cheque after expiry of the term for presentment of the cheque for payment even if the drawer thereby violates the obligations thereof with regard to the payee. The drawer cancels the cheque by giving notice of the cancellation to the drawee of the cheque.

§ 995. Prohibition on payment of cheque

(1) If a cheque is not yet paid, the drawer may, regardless of the expiry of the term for presentment for payment, prohibit payment of the cheque by the drawee if the drawer or any other person has been dispossessed of the cheque against the will of the drawer or the person.

(2) If a drawee pays a cheque despite the drawer having notified the drawee of the prohibition to pay the cheque before payment thereof, the drawee may recover the expenses incurred through payment of the cheque by debiting the account of the drawer in the amount of the cheque only if payment took place for reasons other than the fault of the drawee.

§ 996. Death or restricted active legal capacity of drawer

The validity of a cheque is not affected by the death of the drawer or by the fact that his or her active legal capacity becomes restricted.

§ 997. Verification of endorsements

The drawee of a cheque transferred by means of endorsement is required to verify the uninterrupted series of endorsements, but not the authenticity of the signatures of the endorsers.

§ 998. Restrictions on debiting account of drawer upon payment of cheque

(1) In the case of payment of a forged cheque, a cheque with a forged signature or a cheque with the signature of a person not entitled to represent the drawer, the drawee shall not debit the account of the drawer in the amount of the cheque. If the drawee has already debited the account of the drawer under such circumstances, the drawee shall immediately credit the account in the amount of the debit.

(2) The provisions of subsection (1) of this section do not apply if a cheque is signed by a family member of the drawer or a person for whom the drawer is responsible. Neither do the provisions of subsection (1) of this section apply if a cheque is signed by a person to whom the drawer has entrusted a cheque form and the drawer fails to prove that his or her conduct did not contribute to the payment of the cheque.

§ 999. Account-only cheque

(1) An account-only cheque is a cheque on the face of which the drawer or the holder has written a stipulation "*kontole kandmiseks*" [for payment into a current account] or any other equivalent stipulation prohibiting the drawee to pay the cheque in cash. In such case, the drawee of the cheque may pay the cheque only by crediting the account of the holder by means of a transfer or offset or in any other manner without making a cash payment.

(2) Any cancellation of the stipulation specified in subsection (1) of this section is deemed not to have occurred.

(3) A drawee who pays a cheque in violation of the provisions of subsection (1) or (2) of this section shall compensate for any damage caused by the violation to the extent of the amount of the cheque.

Division 4

Claims in Event of Non-payment of Cheque

§ 1000. Claims of holder of cheque in event of non-payment

(1) In the event of non-payment of a cheque presented within the term for presentment, the holder of the cheque may demand the following from the drawer, the endorser or the person who gave an aval to the cheque:

1) payment of the cheque in the amount not paid;

2) a penalty for late payment in the amount provided for in § 94 of this Act, as of the date of presentment for payment;

3) compensation for expenses relating to a protest or a declaration of non-payment specified in clause (2) 2) of this section, and for other similar expenses;

4) compensation to the extent of 0.33 per cent of the amount specified in clause 1) of this subsection.

(2) A claim specified in subsection (1) of this section may be filed only if non-payment of a cheque is certified by:

1) a protest;

2) a declaration of non-payment written on the cheque by the drawee or a person whose economic activities include the offsetting of cheques, setting out the date of the declaration and the date of presentment for payment.

§ 1001. Terms for protests

(1) A protest or a declaration specified in clause 1000 (2) 2) of this Act shall be drawn up before the expiry of the term for presenting the cheque for payment.

(2) If a cheque is presented for payment on the last day of the term for presentment, a protest or the declaration of non-payment specified in clause 1000 (2) 2) of this Act may also be drawn up on the first working day following the date of presentment.

§ 1002. Failure to adhere to terms due to *force majeure*

(1) If a cheque cannot be presented for payment or a protest or the declaration of non-payment specified in clause 1000 (2) 2) of this Act cannot be drawn up within the specified term due to *force majeure*, the term is deemed to be extended until the *force majeure* ends. Facts which are purely personal to the holder or to the person authorised by the holder to present the cheque or to draw up a protest or a declaration specified in clause 1000 (2) 2) of this Act are not deemed to be *force majeure*.

(2) The holder of a cheque shall immediately give notice of *force majeure* to the endorser of the holder and indicate the notice on the cheque or on an allonge. The notice shall be dated and signed by the holder. The holder of the cheque and the parties to the cheque shall give their notices pursuant to the provisions of § 972 of this Act.

(3) When *force majeure* has ended, the holder of the cheque shall immediately present the cheque for payment and, if necessary, have a protest or the declaration of non-payment specified in clause 1000 (2) 2) of this Act drawn up.

(4) If *force majeure* continues for more than fifty days from the date on which the holder of a cheque gave notice of the *force majeure* to the endorser of the holder, the claim specified in subsection 1000 (1) of this Act may be filed without presenting the cheque or drawing up a protest or a declaration of non-payment specified in clause 1000 (2) 2) of this Act, even if notice was given before the expiry of the term for presenting the cheque for payment.

§ 1003. Limitation period for claims arising from cheques

(1) The limitation period for the claims of holders specified in § 1000 of this Act shall be six months as of the expiry of the term for presenting the cheque for payment.

(2) The limitation period for the right of recourse exercised by a party to a cheque against another party to the cheque who bears solidary liability with the first party shall be six months as of the date when the first party paid the cheque or when an action was filed against the first party. If the law of the home country of one of the parties to the cheque prescribes a longer period of limitation, such period shall be applied also to the right of recourse exercised by the other parties.

§ 1004. Claims arising from unjustified enrichment

(1) If a claim specified in § 1000 of this Act cannot be filed against a drawer due to failure to present the cheque for payment within the specified term or due to the expiry of the limitation period, the drawer shall still be liable to the holder pursuant to the provisions concerning unjustified enrichment.

(2) The limitation period for a claim arising from unjustified enrichment specified in subsection (1) of this section shall be one year as of the issue of the cheque.

(3) A claim arising from unjustified enrichment specified in subsection (1) of this section shall not be filed against an endorser.

Part 10

Noncontractual Obligations

Chapter 49

Public Promise to Pay

Division 1

General Provisions

§ 1005. Public promise to pay

A person who publicly promises to pay for the performance of an act, above all for the achievement of a result, shall pay the promised reward to the person who performs the act even if the performer of the act does not act on the basis of the promise to pay the reward.

§ 1006. Withdrawal of promise to pay or amendment of conditions thereof

(1) A person who promises to pay may withdraw the promise or amend the conditions thereof before the act is performed on condition that the withdrawal or amendment is made known in the same manner as the promise to pay a reward. The withdrawal of a promise to pay also applies to persons who are aware of the withdrawal of the promise to pay.

(2) A person who promises to pay a reward may, at the time the promise is made, waive the right to withdraw the promise. A promise to pay cannot be withdrawn if a term has

been specified for the performance of the act, unless otherwise provided in the content of the promise.

(3) A person who promises to pay a reward and withdraws the promise shall compensate the costs incurred by other persons in good faith based on the promise, unless the person who promises to pay proves that the persons who incurred the costs could not have performed or would not have been able to perform the act for which the reward is promised. The total costs incurred by other persons shall be compensated to the extent of the promised reward.

§ 1007. Performance of act by several persons separately

(1) If several persons perform an act, each at a different time, for which payment of a reward is promised, the reward for the performance of the act shall be paid to the person who is the first to perform the act.

(2) If several persons perform an act separately but at the same time, each of the persons has the right to an equal share of the reward. If the reward cannot be divided due to its nature or if, according to the conditions of the promise to pay the reward, only one person is to receive the reward, the persons entitled to receive the reward shall draw lots.

§ 1008. Joint participation of several persons in performance of act

(1) If several persons participate in the performance of an act for which payment of a reward is promised, the reward shall be divided fairly between them, taking into account the role of each participant in achieving the desired result.

(2) If the performers of an act disagree as to how the reward should be divided between them, the person who promises to pay the reward has the right to refuse to pay until the performers of the act have reached an agreement concerning the manner in which the reward is to be divided. In such case, each of the performers of the act has the right to demand that the reward be deposited jointly for all performers of the act.

(3) If the reward cannot be divided between several persons due to its nature or if, according to the conditions of the promise to pay the reward, only one person is to receive the reward, the persons entitled to receive the reward shall draw lots.

Division 2

Competition

§ 1009. Conditions of competition

(1) In the event of a public promise to pay a reward for the best performance of a specific act (a competition), the object of the competition, the manner of and term for the performance of the act or the tender, the term and procedure for the selection of the best act or tender, and the person who promises to pay the reward (the organiser of the competition) and other circumstances necessary for the conduct of the competition shall be made known in a reasonable manner.

(2) The organiser of a competition may decline to conduct the competition or amend the announced conditions of the competition only if this is prescribed in the conditions of the competition and if the fact of declining to conduct the competition or amending the conditions thereof is announced in the same manner as the competition or the conditions thereof.

(3) If the organiser of a competition declines to conduct the competition or amends the conditions thereof, the organiser shall compensate all reasonable costs incurred in good faith by other persons based on the conditions of the competition, unless the organiser proves that the persons who incurred the costs could not have performed or would not have been able to perform the act which was the object of the competition.

§ 1010. Withdrawal and amendment of tenders

(1) A tenderer may withdraw a tender until the expiry of the term for the making of tenders as specified in the conditions of the competition, unless otherwise prescribed by the conditions of the competition.

(2) A tenderer may amend or supplement the tender only within the term during which the tender may be withdrawn pursuant to the provisions of subsection (1) of this section, and only to the extent prescribed in the conditions of the competition.

§ 1011. Compensation of costs related to tendering

A tenderer or person who performs an act has the right to demand that costs incurred due to participation in the competition be compensated if such possibility is prescribed by law or in the conditions of the competition.

§ 1012. Decision made concerning competition

(1) A decision as to whether an act or tender conforms to the conditions of the competition and, if there is more than one act or tender, regarding which of the acts or tenders should be preferred shall be made by the person specified in the conditions of the competition or, if there is no such person, by the organiser of the competition.

(2) A decision made regarding a competition is binding on the persons concerned and is not contestable in court. The provisions of this subsection do not preclude or restrict the right to make a claim against the organiser of a competition for compensation of damages

arising from violation of the conditions of the competition.

(3) If the conditions of a competition do not specify the manner for selecting the best tender, the organiser of the competition has the right to declare the most suitable tender in the opinion of the organiser to be the best.

(4) A tender which is made or an act which is performed after the expiry of the term specified in the conditions of the competition shall not be taken into account in the competition.

(5) The organiser of a competition may reject all tenders if such a possibility is prescribed in the conditions of the competition.

(6) A decision concerning a competition shall be made and the tenderers or the persons who performed an act shall be informed thereof within the term prescribed in the conditions of the competition.

§ 1013. Requirement to transfer rights

The organiser of a competition may demand the transfer of copyright, another similar right or the right of ownership to a creation or the result of other work presented by the person who performed an act or by a tenderer only if such obligation to transfer is prescribed in the conditions of the competition.

Chapter 50

Presentation of Thing

§ 1014. Requirement to present thing

A person who has a claim with respect to a thing against the possessor of the thing, or a person who wishes to check the existence or absence of such claim may demand that the possessor present the thing or allow the thing to be examined if the person has a legitimate interest therein.

§ 1015. Examination of documents

A person who has a legitimate interest in examining a document which is in the possession of another person may demand that the possessor of the document allow the document to be examined if the document has been prepared in the interests of the person who wishes to examine the document or if the document sets out a legal relationship between such person and the possessor of the document or the preparation of a transaction between those

persons.

§ 1016. Place of presentation of thing or document

A thing or document shall be presented or the examination thereof shall be allowed at the location of the thing or document. Both parties may require that a thing or a document be presented or that examination thereof be allowed at another location if they have good reason for doing so.

§ 1017. Risks and costs

The risks and costs involved in presenting a thing or document or allowing a thing or document to be examined shall be borne by the person who demands the presentation or examination. The possessor may refuse to present the thing or document or allow it to be examined until costs are paid and security is granted against risks involved in the presentation or in allowing the examination.

Chapter 51

Negotiorum gestio

§ 1018. Definition of *negotiorum gestio*

(1) If a person (*negotiorum gestor*) acts for the benefit of another person (principal) without being granted the right or obligated by the principal to perform the act, the *negotiorum gestor* has the rights and obligations provided in §§ 1019-1023 of this Act if:

1) the principal approves of the act;

2) the act corresponds to the interests and actual or presumed intention of the principal;

3) in the case of failure to act, the principal's obligation arising from law to maintain a third party would not be performed in a timely manner or the act is essential in the public interests for another reason.

(2) A case where a person has no desire to act for the benefit of another person is not deemed to be *negotiorum gestio*.

§ 1019. Error by *negotiorum gestor* regarding identity of principal

If a *negotiorum gestor* does not know who the principal is or if the *negotiorum gestor* makes an error in identifying the principal, all rights and obligations which arise from the act belong to the actual principal.

§ 1020. Notifying principal

(1) A *negotiorum gestor* shall, before acting, notify the principal of the intent of the person and wait for a further decision from the principal concerning the act, except in the case where it is not possible to give prior notice without damaging the interests of the principal or public interests or if the *negotiorum gestor* cannot reasonably be expected to give prior notice.

(2) A *negotiorum gestor* who begins to act without giving prior notice thereof to the principal shall inform the principal at the earliest possible opportunity. A *negotiorum gestor* shall wait for a further decision from the principal concerning the act if this is possible and can reasonably be expected of the *negotiorum gestor*.

(3) The provisions of § 624 of this Act apply to other aspects of the notification obligation of *negotiorum gestor*.

§ 1021. Obligation to transfer

(1) The provisions of § 626 of this Act apply to the obligation of *negotiorum gestor* to transfer that which is received as a result of *negotiorum gestio*.

(2) If a *negotiorum gestor* has restricted active legal capacity, the person shall transfer that which is received as a result of his or her acts to the principal pursuant to the provisions concerning unjustified enrichment.

§ 1022. Due diligence of *negotiorum gestor*

(1) In *negotiorum gestio*, the *negotiorum gestor* shall bear the interests of the principal in mind and be guided by the actual or presumed wishes of the principal. This does not apply if it would be contrary to public interests to bear the interests of the principal in mind.

(2) If the objective of *negotiorum gestio* is the prevention of imminent significant danger to the *dominus negoti*, the *negotiorum gestor* shall be liable for any damage caused to the principal thereby only in the case of intent or gross negligence.

(3) The restriction of liability provided for in subsection (2) of this section does not apply in cases where, pursuant to the provisions of subsection 1023 (2) of this Act, the *negotiorum gestor* has the right to claim a reward.

(4) If the *negotiorum gestor* is aware or ought to be aware that the act does not corre-

spond to the wishes of the principal and if the wishes of the principal are not contrary to public interests or law, the *negotiorum gestor* shall be liable for any damage caused to the principal as a result of *negotiorum gestio*. A *negotiorum gestor* is released from liability if the person proves that the damage would have arisen even if the person had not acted without authority.

(5) If a *negotiorum gestor* has restricted active legal capacity, the person shall be liable for any damage caused to the principal only pursuant to the provisions concerning the unlawful causing of damage.

§ 1023. Compensation of costs and payment of reward

(1) A *negotiorum gestor* may demand that the principal compensate the costs incurred by him or her in *negotiorum gestio* and release the person from the obligations assumed thereby. A *negotiorum gestor* may demand to be compensated for costs which the person incurs or released from obligations which the person assumes in *negotiorum gestio* to the extent which may be deemed reasonably necessary in *negotiorum gestio*.

(2) A *negotiorum gestor* in the course of the person's economic or professional activities has the right to demand a reasonable reward from the principal. A *negotiorum gestor* may not demand that the principal pay a reward if the person has the right, arising from a contract entered into with a third party, to demand a reward from the third party.

(3) A *negotiorum gestor* has none of the rights arising from subsections (1) or (2) of this section if, considering the circumstances, it is evident that the person, when beginning to act, did not intend to demand that the principal compensate costs or pay a reward.

§ 1024. Failure to comply with requirements in *negotiorum gestio*

(1) If a *negotiorum gestor* lacks justification for acting as specified in clauses 1018 (1) 2) or 3) of this Act or if the principal does not approve of the fact that the person is acting, the *negotiorum gestor* shall eliminate any consequences created for the principal and compensate any damage created to the principal through *negotiorum gestio*.

(2) If, at the time a *negotiorum gestor* begins to act, the person does not understand and is not required to understand that the person lacks justification for acting pursuant to subsection 1018 (1) of this Act, the person is not required to eliminate any consequences created for the principal through acting but shall nevertheless compensate any damage created by the lack of necessary diligence in *negotiorum gestio*. If the objective of acting is the prevention of imminent significant danger to the principal, the person acting shall be liable only for damage caused to the principal due to the intent or gross negligence of the person.

(3) If, at the time a *negotiorum gestor* begins to act, the person does not understand and is not required to understand that the person lacks justification for acting pursuant to subsection 1018 (1) of this Act, the person shall nevertheless inform the principal of all significant circumstances related to the actions, provide the principal with information concerning the actions on the request of the principal, and submit an overview of the costs and

revenue related to the actions together with the data on which the calculations are based to the principal.

(4) If, at the time a *negotiorum gestor* begins to act, the person does not understand and is not required to understand that the person lacks justification for acting pursuant to subsection 1018 (1) of this Act, the principal shall transfer that which is received as a result of the acting to the *negotiorum gestor* pursuant to the provisions concerning unjustified enrichment.

§ 1025. Compensation for damage to *negotiorum gestor*

(1) A *negotiorum gestor* with the objective of preventing imminent significant danger to the principal has the right to demand compensation from the principal for any damage created as a result of risk characteristic to the prevention of such danger. Compensation for damage may not be demanded from the principal if the employer or mandator of the *negotiorum gestor* or the provider of social security for or the health insurer of the *negotiorum gestor* has the obligation to compensate for the damage.

(2) If a *negotiorum gestor* is also acting in his or her own interests when beginning to act, any harmful consequences arising from the dangerous event which also present a danger to the *negotiorum gestor* shall be taken into consideration to a reasonable extent upon the determination of the amount of compensation for the damage.

§ 1026. Acting in own interest

(1) The provisions of §§ 1018-1024 of this Act do not apply where a person is acting on behalf of another person but believes that the person is acting on the person's own behalf.

(2) The provisions of subsections 1022 (1) and (5) and subsection 1024 (1) apply where a person is acting on behalf of another person as if the person were acting on the person's own behalf in spite of the fact that the person is or ought to be aware that the person does not have the right to do so. If the principal files a claim against a person acting without authority arising from a violation of the obligation specified in subsection 1022 (1) of this Act or a claim specified in subsection 1022 (5) or 1024 (1) of this Act, person acting without authority has the right to demand compensation of costs incurred while acting, pursuant to the provisions concerning unjustified enrichment.

Chapter 52

Unjustified Enrichment

Division 1

General Provisions

§ 1027. Definition of unjustified enrichment

A person shall transfer to another person, on the bases of and to the extent provided for in this Chapter, that which is received from the other person without legal basis.

Division 2

Reclamation of That Which Is Received as Result of Performance of Obligation

§ 1028. Bases for reclamation of that which is received as result of performance of obligation

(1) If a person (recipient) receives anything from another person (transferor) for the performance of an existing or future obligation, the transferor may reclaim it from the recipient if the obligation does not exist or is not created or if the obligation ceases to exist later.

(2) A transferor does not have the right to reclaim that which is received by the recipient from the recipient if:

1) the obligation performed by the transfer is imperfect;

2) the right to demand performance of the obligation has expired by the time of the transfer;

3) the reclamation of that which is received as a result of a void transaction would be contradictory to the provision which prescribes the nullity of the transaction or to the objective of such provision.

§ 1029. Reclamation of that which is transferred to third party at order of obligee

If a transferor performs an obligation with respect to a third party at the order of an obligee or person whom the transferor erroneously believes to be an obligee, the transferor may, in the case specified in subsection 1028 (1) of this Act, only demand that that which is transferred be returned by the obligee or person whom the transferor erroneously believed to be an obligee.

§ 1030. Specifications regarding reclamation of that which is transferred to perform contract entered into for benefit of third party

(1) If a transferor transfers anything to a recipient to perform a contract entered into for the benefit of the recipient, the transferor may, in the case specified in subsection 1028 (1) of this Act, also demand that that which is transferred to the other party or a person whom the transferor erroneously believed to be a party be returned thereby.

(2) If the other party or a person believed to be a party is not aware and is not required to be aware that the contract or the obligation arising from the contract of which performance is desired does not exist, the return of that which is received may only be demanded from the recipient.

§ 1031. Specifications regarding reclamation of that which is transferred in case of waiver of claims

If, after the waiver of a claim, something is transferred to a new obligee for the performance of an obligation arising from the waived claim but the waived claim does not exist, is not created or ceases to exist later, the transferor may also demand that that which is transferred to the person who waived the claim be returned thereby.

§ 1032. Extent of claims

(1) In the case specified in subsection 1028 (1) of this Act, the transferor may demand that the recipient return that which is received and any gains derived therefrom. In the event of the destruction or consumption of, damage to or seizure of the transferred object, the transfer of that which is acquired in compensation for such object may be demanded.

(2) If it is impossible to deliver that which is received due to the nature thereof or for any other reason, the recipient shall compensate the usual value thereof at the time when the right to reclaim was created.

§ 1033. Extent of claim in event of no basis for enrichment

(1) The recipient is not required to return that which is received or compensate the value thereof to the extent to which the recipient is not enriched thereby due to the destruction or consumption thereof, damage thereto or seizure thereof or for any other reasons.

(2) If the recipient believes that the ownership of that which is received is permanent and as a result thereof incurs costs, the recipient is required to transfer that which is received or compensate the value thereof only if the costs incurred by the recipient are compensated to the recipient.

(3) Costs related to the transfer of that which is received, costs incurred upon compensation of the value thereof, and the risk of accidental loss or damage upon transfer of that which is received shall be borne by the transferor.

§ 1034. Restrictions on filing of claims in case of nullity of mutual contract

(1) If a mutual contract is void, the recipient may rely on the provisions of subsection 1033 (1) of this Act with respect to the right to reclaim that which is received on the basis of the contract only if the contract is void due to the restricted active legal capacity of the recipient or due to threats or violence on the part of the transferor.

(2) If a mutual contract is void, the recipient is not required to transfer that which is received or compensate the value thereof if it was destroyed or it deteriorated due to circumstances for which, had the contract been valid, the transferor would have been responsible.

(3) If a mutual contract is void, the parties shall transfer that which is received by them or compensate the value thereof simultaneously. The provisions of § 111 of this Act apply correspondingly.

§ 1035. Liability of recipient in event of knowledge of non-existence of basis for transfer

(1) The provisions of § 1033 of this Act do not apply if, at the time of the transfer, the recipient is or ought to be aware of circumstances which, pursuant to the provisions of this Chapter, constitute a basis for the reclamation of that which is received.

(2) The provisions of § 1033 of this Act do not apply either if the destruction or consumption of or damage to that which is received occur or expenses are made thereon after the recipient becomes or should have become aware of circumstances which, pursuant to the provisions of this Chapter, constitute a basis for reclamation of that which is received.

(3) In the cases specified in subsections (1) and (2) of this section, the recipient shall:

1) transfer the gains derived from that which is received;

2) pay interest to the extent provided by law for any money received;

3) compensate for any profits not gained from that which is received which the recipient could have gained by adhering to the rules of regular management.

(4) In the event of the destruction of or damage to that which is received and if the recipient is or should be aware of circumstances which, pursuant to the provisions of this Chapter, constitute a basis for reclamation of that which is received, such recipient shall compensate for the damage caused due to the destruction thereof or damage thereto to the transferor if the destruction or damage was caused by the fault of the recipient.

§ 1036. Claim for transfer against third party

If the recipient transfers that which is received to a third party without charge and if compen-

sation cannot be obtained from the recipient, the third party shall, pursuant to the provisions of this Chapter, transfer that which is received.

Division 3

Compensation in Event of Violation of Right

§ 1037. Requirement to compensate value in event of violation of right

(1) A person who violates the right of ownership, another right or the possession of an entitled person by disposal, use, consumption, accession, confusion or specification thereof without the consent of the entitled person or in any other manner (a violator) shall compensate the usual value of anything received by the violation to the entitled person.

(2) If the violation of the right of ownership or another right of an entitled person consists of the disposal thereof by the violator, the entitled person may, if the disposal is void, demand compensation of the usual value of that which is received from the violator if the entitled person, pursuant to the provisions of subsection 114 (2) of the General Part of the Civil Code, approves of the disposal.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) The usual value specified in subsections (1) and (2) of this section shall be assessed as at the time of the violation. In the case of disposal for a charge, the agreed charge shall be deemed to be the usual value unless the entitled person proves that the value of the object is higher or unless the violator proves that the value of the object is lower than the agreed charge.

(4) Upon the performance of an obligation in favour of a person not entitled to accept performance, a person entitled to accept performance may demand the transfer of that which is received from the person not entitled to accept performance if the performance is valid with respect to the entitled person or if the entitled person approves thereof pursuant to the provisions of subsection 114 (2) of the General Part of the Civil Code.

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§ 1038. Restrictions on obligation of compensation of value

A violator who is or ought to be aware of the lack of justification for the violation does not have the obligations provided for in subsections 1037 (1) and (4) of this Act in so far the violator ceases to receive gain through enrichment to the extent of the value of that which is received as of the time when the violator becomes or should become aware of the filing of a claim against the violator. Costs incurred in acquiring that which is received shall not be taken into consideration upon the determination of the extent of enrichment.

§ 1039. Liability of violator in bad faith

The entitled person may demand that a violator who is or should be aware of the lack of justification for the violation transfer any revenue received as a result of the violation in addition to the usual value of that which is received. The violator shall inform the entitled person of the nature of revenue received by the violation.

§ 1040. Reclamation of that which is received on basis of disposal without charge

Upon disposal without charge of an object by an unentitled person, the person who acquires the right to the object on the basis of a right of disposal shall transfer that which is received to the entitled person even if the right of disposal is valid. The provisions of §§ 1038 and 1039 of this Act apply correspondingly.

Division 4

Compensation of Costs Incurred for Benefit of Other Persons

§ 1041. Claim arising from performance of obligation of other person

A person who performs an obligation of another person without being entitled or required to do so may demand the compensation of costs incurred in the performance thereof from the person whose obligation the person performed, in so far as the person has enriched due to release from the obligation during the time when the person becomes or should become aware of the filing of a claim for compensation of costs against the person.

§ 1042. Requirement to compensate costs

(1) A person who incurs costs with regard to an object of another person without a legal basis therefor may demand compensation of the costs to the extent to which the person on whose object the costs are incurred has been enriched thereby, taking into consideration, inter alia, the fact of whether such costs are useful to the person and the intent of the person with regard to the object. Determination of the extent of enrichment shall be based on the time when the person with regard to whose object costs are incurred has the object returned or is able to begin to use the increased value of the object in any other manner.

(2) A person who incurs costs has no right of claim provided for in subsection (1) of this section if:

1) the person with regard to whose object costs are incurred demands the removal of

improvements made by means of the incurred costs and if the removal of such improvements is possible without causing damage to the improvements;

2) the person who incurs costs fails, due to circumstances arising from the person, to notify the other person in time of the intent to incur costs;

3) the person with regard to whose object costs are incurred has contested the incurrence of the costs in advance;

4) the incurrence of costs with regard to the object is prohibited arising from law or the contract.

Chapter 53

Unlawful Causing of Damage

Division 1

General Provisions

§ 1043. Compensation for unlawfully caused damage

A person (tortfeasor) who unlawfully causes damage to another person (victim) shall compensate for the damage if the tortfeasor is culpable of causing the damage or is liable for causing the damage pursuant to law.

§ 1044. Claims filed on other basis

(1) The provisions of this Chapter do not preclude or restrict the right of a victim to claim compensation for damage on a legal basis other than that provided in this Chapter or the right to make other claims, unless otherwise provided by law.

(2) Compensation for damage arising from the violation of contractual obligations shall not be claimed on the bases provided in this Chapter, unless otherwise provided by law. Compensation for damage arising from the violation of contractual obligations may be claimed on the bases provided in this Chapter if the objective of the violated contractual obligation was other than to prevent the damage for which compensation is claimed.

(3) If the death, bodily injury or damage to the health of a person is caused as a result of the violation of a contractual obligation, the tortfeasor shall be liable for such damage on the basis provided in this Chapter.

§ 1045. Unlawfulness of causing of damage

(1) The causing of damage is unlawful if, above all, the damage is caused by:

1) causing the death of the victim;

2) causing bodily injury to or damage to the health of the victim;

3) deprivation of the liberty of the victim;

4) violation of a personality right of the victim;

5) violation of the right of ownership or a similar right or right of possession of the victim;

6) interference with the economic or professional activities of a person;

7) behaviour which violates a duty arising from law;

8) intentional behaviour contrary to good morals.

(2) The causing of damage is not unlawful if:

1) the right to cause damage arises from law;

2) the victim consents to the damage being caused, except in the case where the grant of such consent is contrary to law or good morals;

3) the tortfeasor acted in self-defence or in necessity;

4) the tortfeasor legitimately used self-help to perform or protect the tortfeasor's rights.

(3) The causing of damage by the violation of a duty arising from law is not unlawful if the objective of the provision which the tortfeasor violates is other than to protect the victim from such damage.

(4) The behaviour of an abettor or aider with regard to an act which causes damage is deemed to be equal to the behaviour of a tortfeasor, and they are liable for damage on the same basis as a tortfeasor.

§ 1046. Unlawfulness of damaging personality rights

(1) The defamation of a person, inter alia by passing undue judgement, by the unjustified use of the name or image of the person, or by breaching the inviolability of the private life or another personality right of the person is unlawful unless otherwise provided by law. Upon the establishment of unlawfulness, the type of violation, the reason and motive for the

violation and the gravity of the violation relative to the aim pursued thereby shall be taken into consideration.

(2) The violation of a personality right is not unlawful if the violation is justified considering other legal rights protected by law and the rights of third parties or public interests. In such case, unlawfulness shall be established based on the comparative assessment of different legal rights and interests protected by law.

§ 1047. Unlawfulness of disclosure of incorrect information

(1) The violation of personality rights or interference with the economic or professional activities of a person by way of disclosure of incorrect information or by the incomplete or misleading disclosure of factual information concerning the person or the activities of the person is unlawful unless the person who discloses such information proves that, upon the disclosure thereof, the person was not aware and was not required to be aware that such information was incorrect or incomplete.

(2) The disclosure of defamatory facts concerning a person or facts which may adversely affect the economic situation of a person is deemed to be unlawful unless the person who discloses such facts proves that the facts are true.

(3) Regardless of the provisions of subsections (1) and (2) of this section, the disclosure of information or facts is not deemed to be unlawful if the person who discloses the information or facts or the person to whom such facts are disclosed has legitimate interest in the disclosure and if the person who discloses the information has checked the information or facts with a thoroughness which corresponds to the gravity of the potential violation.

(4) In the case of the disclosure of incorrect information, the victim may demand that the person who disclosed such information refute the information or publish a correction at the person's expense regardless of whether the disclosure of the information was unlawful or not.

§ 1048. Unlawfulness of incorrect opinion of expert

The behaviour of an expert is deemed to be unlawful if the expert provides incorrect information or an incorrect opinion to another person in a financial matter or, regardless of receiving new knowledge concerning the matter, fails to correct the information or opinion already provided, and if the expert enjoys particular trust due to his or her professional activities and the person who was given the information or opinion could expect to rely on such trust.

§ 1049. Unlawfulness of halting of economic or professional activities

It is deemed unlawful to cause a complete or partial halt in the economic or professional ac-

tivities of another person for a significant period if the halt is caused by interfering in the activities by means of an unlawful threat or a prohibited boycott, demonstration or strike, or in another manner aimed specifically at halting the economic or professional activities of the person.

§ 1050. Culpability as basis for liability

(1) Unless otherwise provided by law, a tortfeasor is not liable for the causing of damage if the tortfeasor proves that the tortfeasor is not culpable of causing the damage.

(2) The situation, age, education, knowledge, abilities and other personal characteristics of a person shall be taken into consideration upon assessment of the culpability of the person for the purposes of this Chapter.

(3) If several persons are liable for the compensation of damage and, pursuant to law, one or several of them are liable for compensation of unlawfully caused damage regardless of whether or not they are culpable, the wrongfulness of the behaviour and the form of the culpability of the persons liable for the compensation of damage shall be taken into consideration upon the division between them of the obligation to compensate for the damage.

§ 1051. Prohibition on preclusion or restriction of liability

An agreement which precludes or restricts liability for damage caused unlawfully or intentionally is void.

§ 1052. Restrictions on liability

(1) A person under 14 years of age shall not be liable for damage caused by himself or herself.

(2) A person shall not be liable for damage caused by himself or herself if he or she caused the damage in such a condition that he or she could not understand the meaning of or direct his or her actions. Temporary disorders caused by alcoholic beverages or narcotic or psychotropic substances shall be taken into consideration only in the case where the tortfeasor is in such a situation for a reason other than his or her own fault.

(3) A person who, pursuant to subsections (1) or (2) of this section, is not liable for damage shall nevertheless be liable for damage caused by himself or herself if it would be unjustified with regard to the victim to release the person from liability considering the tortfeasor's age, state of development and mental state, the type of act, the financial situation of the persons concerned, including existing insurance or insurance which such persons could normally be presumed to have, and also other circumstances.

§ 1053. Liability for damage caused by children and persons placed under curatorship

(1) The parents or curator of a person under 14 years of age shall be liable for damage unlawfully caused to another person by the person under 14 years of age regardless of the culpability of parents or curator.

(2) The parents or curator of a person of 14 to 18 years of age shall also be liable for damage unlawfully caused to another person by the person of 14 to 18 years of age regardless of the culpability of the parents or curator, unless they prove that they have done everything which could be reasonably expected in order to prevent the damage.

(3) In the cases provided for in subsections (1) and (2) of this section, a person who, by a contract, assumes the obligation to exercise supervision over a child shall be liable for damage caused by the child.

(4) In the relationship between a child and his or her parents or curator or a person specified in subsection (3) of this section, only the parents, curator or person specified in subsection (3) of this section shall be liable even if the child himself or herself is liable for the unlawful causing of damage.

(5) The curator of a person with restricted active legal capacity who has been placed under curatorship due to mental disability shall be liable for damage unlawfully caused by the person to another person, unless the curator proves that he or she has done everything which could be reasonably expected in order to prevent the ward from causing damage. In the relationship between a ward and the curator, the curator is presumed to be liable even if the ward himself or herself is liable for the causing of damage.

§ 1054. Liability for violation committed by other person

(1) If one person engages another person in the person's economic or professional activities on a regular basis, the person shall be liable for any damage unlawfully caused by the other person on the same basis as for damage caused by the person, if the causing of damage is related to the person's economic or professional activities.

(2) If one person engages another person in the performance of the person's duties, the person shall be liable for any damage unlawfully caused by the other person on the same basis as for damage caused by the person if the damage is caused or the occurrence thereof is made possible through the performance of such duties.

(3) If a person performs an act at the request of another person, the person at whose request the act is performed shall be liable for any damage caused in the course of the performance thereof on the same basis as for damage caused by the person if the damage is caused or the occurrence thereof is made possible through the performance of the act and if, due to the relationship between the person at whose request the act is performed and the person who causes the damage, the person at whose request the act is performed has control over the behaviour of the person who causes the damage.

§ 1055. Prohibition on performance of damaging acts

(1) If unlawful damage is caused continually or a threat is made that unlawful damage will be caused, the victim or the person who is threatened has the right to demand that behaviour which causes damage be terminated or the making of threats with such behaviour be refrained from.

(2) The right to demand that behaviour which causes damage as specified in subsection (1) of this section be terminated does not apply if it is reasonable to expect that such behaviour can be tolerated in human co-existence or due to significant public interest. In such case, the victim has the right to make a claim for compensation for unlawfully caused damage.

Division 2

Liability for Damage Caused by Major Source of Danger

§ 1056. Liability for damage caused by major source of danger

(1) If damage is caused resulting from danger characteristic to a thing constituting a major source of danger or from an extremely dangerous activity, the person who manages the source of danger shall be liable for causing of damage regardless of the person's culpability. A person who manages a major source of danger shall be liable for causing the death of, bodily injury to or damage to the health of a victim, and for damaging a thing of the victim, unless otherwise provided by law.

(2) A thing or an activity is deemed to be a major source of danger if, due to its nature or to the substances or means used in connection with the thing or activity, major or frequent damage may arise therefrom even if it is handled or performed with due diligence by a specialist. If liability for causing damage by means of a source of danger is prescribed by law, any thing or activity similar to such source of danger is also deemed to be a source of danger, regardless of whether the person who manages the source of danger is culpable or not.

(3) The provisions of this Division do not preclude or restrict the right to make claims on any other legal basis, including claims for compensation of unlawfully and wrongfully caused damage.

§ 1057. Liability of possessor of motor vehicle

A direct possessor of a motor vehicle shall be liable for any damage caused upon the operation of the motor vehicle, unless:

1) the damage is caused to a thing being transported by the motor vehicle and which is

not being worn or carried by a person in the vehicle;

2) the damage is caused to a thing deposited with the possessor of the motor vehicle;

3) the damage is caused by *force majeure* or by an intentional act on the part of the victim, unless the damage is caused upon the operation of aircraft;

4) the victim participates in the operation of the motor vehicle;

5) the victim is carried without charge and outside the economic activities of the carrier.

§ 1058. Liability of owner of dangerous structure or thing

(1) The owner of a structure shall be liable for damage caused as a result of particular danger arising from the structure due to the production, storage or transmission in the structure of energy, substances which are flammable, involve a radiation hazard or can cause combustion, or toxic, caustic or environmentally hazardous substances, and for damage caused as a result of particular danger arising from the structure for any other reason. The owner of a thing shall be liable for damage caused as a result of particular danger arising from the thing due to its flammable, radiation, combustible, toxic, caustic or environmentally hazardous characteristics, and for damage caused as a result of particular danger arising from the thing for any other reason.

(2) If a dangerous structure or thing is a potential cause of damage, it shall be presumed that the damage is caused as a result of particular danger arising from the structure or thing. This does not apply if the structure or thing is operated according to requirements and if the operation thereof is not disturbed.

(3) An owner shall not be liable on the basis of the provisions of subsection (1) of this section, if:

1) the damage is caused within the boundaries of a marked immovable in the possession of the owner of the dangerous structure;

2) the damage is caused by *force majeure*;

3) the victim participates in the operation of the dangerous structure or thing.

(4) If a dangerous structure or thing is operated according to requirements and the operation thereof is not disturbed, the owner of the structure or thing is not liable for damaging a thing of the victim in so far as the thing is not materially damaged or, if it is damaged, to an extent deemed to be normal considering the local circumstances.

(5) If it may be presumed that damage has been caused to the victim as a result of danger arising from a dangerous structure or thing, the victim has the right to demand that the owner of the structure or thing present information and documents in order to establish the owner of the structure or thing.

§ 1059. Liability for structure

The owner of the land under a structure or a person who owns another real right on the basis of which the structure is created, shall be liable for damage caused by the collapse of the structure and for damage caused by loosened and falling parts of the structure, icicles and so on, unless the owner proves that the damage is caused by *force majeure* or an act of the victim.

§ 1060. Liability of keeper of animal

The keeper of an animal shall be liable for damage caused by the animal.

Division 3

Liability for Defective Product

§ 1061. Liability of producer

(1) The producer shall be liable for causing the death of a person and for causing bodily injury to or damage to the health of a person if this is caused by a defective product.

(2) If a defective product causes the destruction of or damage to a thing, the producer shall be liable for damage caused thereby only if:

1) this type of thing is normally used outside economic or professional activities, and

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2) the victim mainly used the product outside the economic or professional activities of the victim, and

3) the extent of the damage exceeds an amount equal to 500 euro.

(3) The producer shall not be liable for damage caused to the product itself by a defect.

(4) The producer shall be liable for a defective medicinal product on the basis of the provisions of this Division unless otherwise provided by law.

(5) The provisions of this Division do not preclude or restrict the right to make claims on any other legal basis, including claims for compensation of unlawfully and wrongfully caused damage.

§ 1062. Producer

(1) The following are deemed to be producers:

1) a person who manufactures a finished product, raw material or part of a product;

2) a person who claims to be the manufacturer of a product and indicates the person's name, trade mark or other distinctive mark on the product;

3) a person who brings a product into Estonia or into a member state of the European Union in the course of the person's economic activities with the objective of selling, leasing or marketing of the product in any other manner.

(2) If the producer cannot be identified, any person who has delivered the product to a victim shall be deemed to be the producer if such person does not disclose the identity of the producer or the person who delivered the product to the person within a reasonable time after the victim has made a corresponding proposal.

(3) The provisions of subsection (2) of this section also apply to products brought into Estonia or into a member state of the European Union if the importer of such products cannot be identified, even if the name of the producer thereof is known.

§ 1063. Product

(1) Any movable is deemed to be a product, even if the movable constitutes a part of another movable or if the movable has become a part of an immovable, and electricity and computer software are also deemed to be movables.

(2) A product is defective unless it is safe to an extent which corresponds to a person's legitimate expectations, bearing in mind all the circumstances, and above all:

1) the manner and conditions of presentation of the product to the public;

2) the method of use of the product which the victim can reasonably presume;

3) the time of placing the product on the market.

(3) A product shall not be deemed to be defective solely for the reason that a product with better characteristics is later placed on the market.

§ 1064. Release of producer from liability

(1) The producer shall not be liable for damage arising from a product if the producer proves that:

1) the producer has not placed the product on the market;

2) circumstances exist on the basis of which it may be presumed that the product did not have the deficiency which caused the damage at the time that the product was placed on the market by the producer;

3) the producer did not manufacture the product for sale or for marketing in any other manner produce or market it in the course of the producer's economic or professional activities;

4) the deficiency is caused by the compliance of the product with the mandatory requirements as at the time of placing the product on the market;

5) due to the level of scientific and technical knowledge at the time of placing the product on the market, the deficiency could not have been detected.

(2) In addition to the bases for release from liability provided for in subsection (1) of this section, a producer of raw material or a part of a product shall not be liable for damage if the producer proves that the deficiency of the raw material or part of the product is caused by the construction of the finished product or the instructions provided by the producer of the finished product.

(3) The liability of the producer shall not be reduced if the damage occurs due to both a deficiency of the product and the behaviour of a third party.

§ 1065. Victim's burden of proof

The victim shall prove the existence of damage, the deficiency of a product, and a causal relationship between the deficiency of the product and the damage caused.

§ 1066. Limitation period for and termination of claims

(1) The limitation period for claims arising from the provisions of this Division is three years as of the date on which the victim becomes aware or should reasonably become aware of the damage, the deficiency and the identity of the producer.

(2) Regardless of the provisions of subsection (1) of this section, claims which arise from the provisions of this Division shall terminate after ten years have passed as of the date on which the product which causes damage is placed on the market, unless an action has been filed with a court by that time.

(3) The provisions of subsection (2) of this section do not apply to claims recognised by a court decision entered into force or arising from another execution document, or to claims the existence of which is recognised by a contract, or to claims arising from a new right acquired on the basis of a compromise contract.

§ 1067. Mandatory nature of provisions

An agreement which restricts or precludes the liability of a producer as provided for in this Division is void.

Part 11

Implementation of Act

§ 1068. Entry into force of Act

This Act enters into force as of the date provided in the Implementation Act thereof.

[1] RT = *Riigi Teataja* = *the State Gazette*

[2] *Ametlikud Teadaanded* = *Official Notes*