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Portuguese Commercial Code

(28.JUN.1888)

Partial nonofficial translation[[1]](#footnote-1)

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Article 1

The commercial law rules commercial acts either performed by traders or non-traders.

Article 2

It will be deemed as commercial acts all the acts which are especially regulated by this Code, and, beyond them, all contracts and obligations of traders which do not have an exclusive civil nature, if the contrary does not result from the act itself.

Article 7

Everyone, domestic or foreign, who is civilly able to bound himself, may perform acts of commerce in any part of this kingdom and their domains under and save the exceptions set out in this Code.

Article 13

Traders are:

1 Those who having the capacity to exercise acts of commerce[[2]](#footnote-2), develop the latter as a profession;

2 The commercial corporate companies.

Article 14

It is forbidden to trade professionally to:

1 Associations or corporations that do not have as their object material interests;

2 Those who by law or special provisions can´t trade.

Article 15

The commercial debts of a trader spouse are presumed to be contracted in the exercise of his/her commerce.

Article 17

The State, the District, the Municipality and the Parish cannot be traders, but can, within the limits of their powers, perform acts of commerce, and as to these they are subject to the provisions of this Code.

Paragraph unique: The same provision is applied to the mercies, nursing homes and further benefaction and charitable organizations.

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Article 100[[3]](#footnote-3)

In commercial obligations, the co-obligors are jointly and severally liable, unless otherwise stipulated.

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Article 18[[4]](#footnote-4)

Traders are especially required to:

1st adopt a business name;

2nd have mercantile bookkeeping;

3rd provide for the entry in commercial register of the acts subject to registration;

4th render accounts.

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Article 29

Any trader is obligated to have bookkeeping in accordance with law.

Article 30

The trader can choose the organization mode of bookkeeping as well as it´s physical support, without prejudice to the provisions of next article.

Article 31

1. Commercial corporate companies are obligated to have books for minutes.

2. The minute books can be composed by single sheets, sequentially numbered and initialed by company administration or by the members of the corporate body they concern or, when existing, by the corporate secretary or by the general meeting president, who also draw up the opening and the closing terms, with loose sheets being bound after use.

Article 37

The books or minute sheets shall be used to record the minutes of the meetings of partners, directors and corporate bodies, each of which shall express the date on which it was held, the names of the participants or reference to the list of attendees authenticated by the bureau, the votes cast, the resolutions passed and everything else that may be used to make these known and substantiate them, and shall be signed by the bureau, if any, and, if there are none, by the participants.

Article 38

Any trader may do his commercial bookkeeping for himself or for another person to whom he authorizes for this purpose.

Paragraph unique

If the trader does not do the bookkeeping himself, it is presumed that he has authorized the person to do it.

Article 39

1. Without prejudice to electronic minute books, minutes shall be drawn up without gaps in blank, between lines or erasures.

2. In case of error, omission or erasure, such fact must be saved before the signature.

Article 40

1 - Any trader is obligated to file the correspondence issued and received, his commercial bookkeeping and the documents related to it, and must keep everything for a period of 10 years.

2. The documents referred to in the previous paragraph may be filed by electronic means.

Article 41

The administrative or judicial authorities, when analyzing whether or not the trader duly organizes its commercial bookkeeping, must respect its options, carried out in accordance with Article 30.

Article 42

The judicial display of the commercial deeds and the documents related to them can only be ordered in favor of the interested parties, in matters of universal succession, communion or society and in case of insolvency.

Article 43

Outside the cases provided for in the previous article, the bookkeeping and documents of traders may only be examined, either if required by a party in a law suit or determined of its own motion by the court, when the person to whom they belong has an interest or responsibility in the matter in which such presentation is required.

Article 44

Commercial books may be admitted in court to give evidence between traders, in facts of their trade, under the following terms:

1st Recordings made into commercial books, even when not regularly arranged, prove against the traders, whose are; but the litigants, who want to help themselves with those recordings, must also accept the ones that are prejudicial to them;

2nd The regularly arranged books recordings provide evidence in favor of their respective owners, not presenting the other litigant opposing recordings into books arranged on the same terms or proof otherwise;

3rd When the combination of one litigant's commercial books, regularly arranged, results in contradictory proof, the court will decide the matter on the merits of any other evidence;

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Article 230

Individual or collective companies shall be deemed commercial when purposing themselves to:

1 Transform, through factories or manufactures, raw materials, using workers or workers and machines;

2 Provide supplies, in different eras, either to private persons or to the State, according to an agreed price;

3 Act as business or auctions agent on behalf of others in public open office and according to a stipulated salary;

4 Explore any public performances;

5 Edit, publish or sell scientific, literary or artistic works;

6 Edify or build houses for others with materials provided by the entrepeneur;

7 Transport, regular and permanently, by water or by land, any persons, animals, tools or goods of others.

Paragraph 1 Number one shall not be applicable to the landlord or to the rural explorer that just make or manufacture the land products ancillary to the rural exploitation, neither to the artist, the industrial, the master or the worker of a mechanical profession who works directly in its art, craft or industry, although they employ workers or workers and machines;

Paragraph 2 Number two shall not be applicable to the landlord or to the rural explorer that supplies goods from their own land.

Paragraph 3 Number five shall not be applicable to the author who edit, publish or sell his own works.

Article 231

A commercial **mandate** exists when any person undertakes to perform one or more commercial acts on behalf of another

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Article 266

A **commission contract** exists when the mandator performs the commercial mandate without any mention or allusion to the principal, by himself and in his name, as the main and only contracting party.

Article 394

For the **loan** agreement to be considered commercial, it is necessary that the thing ceded is destined to any commercial act.

Article 395

The commercial loan is always paid back.

Sole Paragraph. The retribution will be, in the absence of intervention, the legal rate of interest calculated on the value of the assigned item.

Article 396[[5]](#footnote-5)

The commercial loan between merchants admits, whatever its value, all types of evidence.

Article 397

For the **pledge** to be considered a commercial pledge, it is necessary that the debt which is being pledged comes from a commercial act.

Article 403

For a **deposit** to be considered merchantable, it must be of goods or merchandise intended for any act of commerce.

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Article 344

A **current account contract** occurs whenever two parties, having to deliver values to each other, agree to transform their credits into articles of "shall" and "shall have", in such a way that only the final balance resulting from their settlement is due to them.

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5th The maturity of interest on amounts credited to a current account at the expense of the debtor as from the actual date of receipt.

Sole paragraph. The current account entry of goods or credit titles is always presumed to be made with the "collection preservation" clause.

Article 348

The closing of the current account and consequent liquidation of the balance shall take place at the end of the term established by the contract or, failing that, at the end of the calendar year.

Sole Paragraph. The interest on the balance shall run from the date of settlement.

Article 350

Prior to the closing of the account, none of the interested parties shall be considered as creditor or debtor of the other, and only the closing of the account shall invariably fix the status of the legal relations of the parties, produce by operation of law the offsetting of the debt against the concurrent credit and determine the person of the creditor and the debtor.

Article 362

All **bank operations** tending to make a profit on cash, public funds or negotiable securities, and, in particular, exchange operations, arbitrage, loans, discounts, collection, opening of credits, issue and circulation of notes or fiduciary titles payable on demand or to bearer are commercial operations.

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Article 463

The following are **considered commercial**:

1st **Purchases** of movable property for resale, unworked or worked, or simply to rent out their use;

2nd **Purchases**, for resale, of public funds or of any negotiable debt securities;

3rd **Sales** of movable things, raw or worked, and those of public funds or of any negotiable securities, when the acquisition was made with a view to reselling them;

4th **Purchases and resales** of immovable property or of rights inherent thereto, when the same were made for the purpose of reselling them;

5th **Purchases and sales** of parts or shares of commercial corporate companies.

Article 464

The following are **not considered commercial**:

1st **Purchases** of any movable items intended for the use or consumption of the purchaser or his family and any resale of such items;

2nd **Sales** made by the owner or rural exploiter of products owned by him or her or explored by him or her, and of foodstuffs on which any rents have been paid;

3rd **Purchases** that artists, industrialists, masters and officers of mechanical trades directly exercising their art, industry or trade, make of objects to be transformed or perfected in their establishments, and the **sales** of such objects that they make after being so transformed or perfected;

4th **Purchases and sales** of animals made by breeders or fatteners.

1. Free translation by Pedro de Sá Nogueira [↑](#footnote-ref-1)
2. Traders are also those who exercise professionally at least one of the activities mentioned in article 230 [↑](#footnote-ref-2)
3. The opposite for non-commercial (civil) obligations: the co-obligors are jointly and severally liable just in case of agreement or a provision of law exists. [↑](#footnote-ref-3)
4. The articles that contained the provisions for the first three situations are not ruled by the Commercial Code any more, but by other laws [↑](#footnote-ref-4)
5. To the regular cases, a non-commercial loan or a commercial one in which the contracting parties are not merchants, are applicable the provisions of article 1.143º of Portuguese Civi Code: “*Without prejudice to the provisions of a special law, a loan agreement for an amount exceeding EUR 25,000 shall only be valid if made by public deed or by certified private document and a loan agreement for an amount exceeding EUR 2,500 shall only be valid if made by a document signed by the borrower.*” [↑](#footnote-ref-5)