

**TITLE II - Juridical relations**

**SUBTITLE I - People**

**CHAPTER I – Natural persons**

**SECTION I - Personality and juridical capacity**

Art. 66 - Beginning of personality

1. The personality is acquired at full and live birth.
2. The rights that the law recognizes to the “nascituros” depend on his/her birth.

Art. 67 - Juridical capacity

People can be subject on any juridical relation, unless otherwise provided by law; this consists of his/her legal capacity.

Art. 68 - Term of personality

1. Personality ceases with death.
2. When a certain juridical effect depends on the survival of one to another person, it is presumed, in case of doubt that one and another died at the same time.
3. A person whose body was not found or recognized, when the disappearance is given in circumstances which give no reason to doubt about his/her death, is considered deceased.

Art. 69 - Waiver of juridical capacity

No one can waive, in whole or in part, to his/her juridical capacity.

## **SECTION II – Personality rights**

### **Art. 70 – General guardianship of personality**

1. The law protects individuals against any unlawful interference or threat of harm to their physical or moral personality.
2. Regardless of liability which may be incurred, the person threatened or offended may require under the circumstances appropriate action, in order to prevent the consummation of the threat or mitigate the effects of the already committed offense.

### **Art. 71 - Damage to deceased persons**

1. Personality rights also enjoy protection after the death of the holder.
2. The surviving spouse or descendant, ascendant, brother, nephew or heir of the deceased has the legitimacy, in this case, to apply the measures provided for in paragraph 2 of the preceding article.
3. If the unlawful nature of the offense results of lack of consent, only the people who should pay the consent are entitled, jointly or separately, to apply the provisions to which the preceding paragraph refers.

### **Art. 72 - Right to a name**

1. Everyone has the right to use his/her name, full or abbreviated, and oppose others who use it illegally for identification or other purposes.
2. The holder of the name cannot, however, especially in the exercise of a professional activity, use it in order to harm the interests of those who have fully or partly identical name, in which case the court shall order the measures which, according to equity, better reconcile the conflicting interests.

### **Art. 73 – Legitimacy**

Legal actions regarding the defense of the name may be exercised not only by the holder, but as well as, after his death, by the persons referred to in paragraph 2 of Article 71.

#### Art. 74 – Alias

The alias, when holding notoriety, enjoys the protection attributed to the name itself.

#### Art. 75 – Confidential letters-missives

1. The recipient of the letter-missive of confidential nature must keep reserve on its content; it is not lawful to take advantage of the information that it has brought to his/her attention.

2. Being dead the recipient, can the restitution of the confidential letter be ordered by court, at the request of the author or, if already dead, of the persons indicated in paragraph 2 of Article 71; the destruction of the letter, its deposit in the hands of idoneous person or any other appropriate measure may also be ordered.

#### Art. 76 - Publication of confidential letters

1. Confidential letters-missives may only be published with the consent of the author or with the judicial remedy of such consent; but there is no place to remedying when using those letters as a literary, historical or biographical document.

2. After the author's death, the authorisation lies with the persons designated in paragraph 2 of Article 71, in the order indicated therein.

#### Art. 77 – Family memoirs and other confidential written documents

The preceding article shall apply, *mutatis mutandis*, to family and personal memoirs and other writings that have confidential status or refer to the intimacy of private life.

#### Art. 78 – Non-confidential letters-missives

The recipient of the non-confidential letter can only use it in terms that it does not contradict the author's expectations.

#### Art. 79 - Right to image

1. The image of a person can not be displayed, reproduced or commercially released without his/her consent; after the death of the portrayed person, authorization rests with the persons designated in paragraph 2 of Article 71, in the order indicated therein.

2. The consent of the portrayed person is not required, as so justifiable by his/her reputation, the position he/she plays, the demand of police or justice, for scientific, didactic or cultural purposes, or when the image comes framed on the image of public places, or on the image of facts of public interest or that may have publicly elapsed.

3. The image cannot, however, be reproduced, displayed or commercially released, if the act results in injury to the honor, reputation or simple decency of the portrayed person.

#### Art. 80 - Right to privacy

1. Everyone must keep a reservation regarding the private life of others.

2. The extent of the reserve is defined accordingly to the nature of the case and the condition of the people.

#### Article 81 – Voluntary limitation of personality rights

1. Every voluntary limitation to the exercise of personal rights is null and void if it is contrary to the principles of public order.

2. The voluntary limitation, when legal, is always revocable, notwithstanding the obligation to compensate the damage caused to the legitimate expectations of the other party.

### **SECTION III – Domicile**

#### Art. 82 – General voluntary domicile

1. A person is domiciled in the place of his/her habitual residence; if residing alternately in several places, is domiciled in any of them.

2. In the absence of habitual residence, one is considered to be domiciled in the place of his/her occasional residence or, if this can not be determined, in the place where he/she can be found.

#### Art. 83 – Professional domicile

1. A person pursuing a profession has, for the relationships that relate to his/her profession, a professional domicile in the place where the profession is exercised.
2. If the occupation is exercised in different places, each of them is the domicile to the relations that correspond to it.

#### Art. 84 – Elective domicile

It is allowed to stipulate a private domicile to certain businesses, provided that this stipulation is in writing.

#### Art. 85 - Legal domicile of minors and interdicts

1. The minor is domiciled at the place of residence of the family; if it does not exist, he/she is domiciled at the residence of the parent who is in charge of parental custody.
2. The domicile of a minor, which, under judicial decision, has been entrusted to a third person or to an educational or assistance service, is the one of the parent who has parental custody.
3. The domicile of the minor subject to guardianship and of the interdict is that of his/her tutor.
4. When the regime of asset management has been instituted, the domicile of the minor or of the interdict is the one of administrator, regarding the relations that that administration refers to.
5. The rules of the previous paragraphs do not apply if they make the minor or the interdicted not being domiciled in national territory.

#### Art. 86 – Revoked

(Revoked by Decree-Law no. 496/77, of November the 25<sup>th</sup>)

#### Art. 87 - Legal domicile of public employees

1. Public employees, civilian or military, when there is a certain place for the exercise of their jobs, have their domicile in it, without prejudice to their voluntary domicile in the place of their habitual residence.

2. The necessary domicile is determined by the possession of office or the performance of their duties.

**Art. 88 - Legal domicile of Portuguese diplomatic agents**

Portuguese diplomatic agents, when claiming extraterritoriality, are considered domiciled in Lisbon.

**SECTION IV – Absence**

**SUBSECTION I – Provisional guardianship**

**Art. 89 - Appointment of a provisional administrator**

1. When there is a need to provide on the administration of the assets of those who disappeared, without being known his/her whereabouts and having not left a legal representative or attorney, the court must appoint him/her a temporary administrator.
2. It should also be appointed an administrator to the absent person, if the attorney is unwilling or unable to perform his/her duties.
3. A special administrator may be assigned to certain businesses, whenever the circumstances require it.

**Art. 90 - Precautionary measures**

The possibility of appointment of a provisional administrator shall not preclude precautionary measures that may be necessary in relation to any assets of the missing person.

**Art. 91 – Legitimacy**

The provisional guardianship and precautionary measures referred to in the preceding article may be requested by the public prosecutor or by any interested party.

**Art. 92 - Who should be granted the provisional guardianship**

1. The provisional administrator will be chosen from the following people: the absent's spouse, one or some of the presumptive heirs or one or some of those interested in the conservation of the assets.
2. Existing a conflict of interest between the missing person and the administrator or between the missing person and the spouse, ascendants or descendants of the administrator, a special administrator should be appointed, pursuant to paragraph 3 of Article 89.

#### Art. 93 - List of assets and deposit

1. The assets of the missing person will be listed and then delivered to the provisional administrator, to whom a bond shall be fixed by court.
2. In case of urgency, the deliver of the assets may be authorized before their listing, or before the administrator provides the required bond.
3. If the administrator does not pay the deposit, another administrator will be appointed in his/her place.

#### Art. 94 - Rights and duties of the provisional administrator

1. The administrator is subject to the rules of the general mandate for anything that does not contradict the provisions of this subsection.
2. The provisional administrator is incumbent of requiring precautionary procedures and initiate necessary actions that can not be delayed without prejudice to the interests of the absent; he/she is in charge, as well, of representing the absent person in all actions proposed against him/her (the absent).
3. Only with judicial authorization may the administrator alienate or encumber immovable assets, precious objects, securities, commercial establishments and any other assets whose alienation or encumbrance does not constitute an act of administration.
4. The judicial authorization shall be granted only when the act is justified to avoid the deterioration or destruction of the asset, to solve debts of the absent, to fund necessary or useful improvements or to assist any other urgent need.

#### Art. 95 – Accountability

1. The provisional administrator must report annually on its mandate before court or when it requires it.
2. After deferral of definitive guardianship under the following subsection, the accounts of the provisional administrator are reported before the definitive administrator.

#### Art. 96 - Remuneration of the administrator

The administrator will hold ten percent of the obtained net revenue.

#### Art. 97 – Replacement of the provisional administrator

The administrator may be replaced, upon request of the public Prosecutor or any interested party, as soon as the inconvenience of his/her action in office.

#### Art. 98 - Term of guardianship

The provisional guardianship ends:

- a) With the return of the absent person;
- b) If the absent person provides about the administration of the assets;
- c) By the attendance of the person who legally represents the absent person or by attorney;
- d) By delivering the assets to the definitive administrators or to the head-of-household, under Article 103;
- e) With the certainty of death of the absent person.

### **Subsection II – Definitive guardianship**

#### Art. 99 - Justification of absence

After two years without knowing about the absent person and if he/she has not left a legal representative or attorney, or after five years, on the opposite case, can the public prosecutor or any interested party request the justification of absence.

#### Art. 100 – Legitimacy

The spouse not legally separated from persons and property, the heirs of the absent and all who hold a right upon the assets, conditioned upon his death, are interested in the justification of the absence.

#### Art. 101 - Opening of wills

After justification of the absence, the court will order certificates of public testaments and arrange for the opening of closed wills that exist, in order to be taken into account in the sharing process and in the granting of definitive guardianship.

#### Art. 102 - Delivery of assets to the legatees and other interested persons

The legatees, as well as all those who, by death of the absent person, would be entitled to certain assets, may require, as soon as the absence is justified, regardless of the sharing, that those assets are delivered to them.

#### Art. 103 - Delivery of assets to heirs

1. The delivery of assets to the heirs of the absent person to the date of the latest news, or to the heirs of those who have died later, only takes place after the partition.
2. While not delivered the assets, the administration of them belongs to the head-of-household, appointed pursuant to Articles 2080 and following.

#### Art. 104 – Definitive administrators

Heirs and other interested parties to whom the assets of the absent person have been delivered are considered as his/her definitive administrators.

#### Art. 105 – Showing of new interested persons

If after the appointment of the definitive administrators appears an heir or an interested person, who on the date of the latest news of the absent person, should exclude any of them or

be there to compete to succeed, the assets shall be delivered to him/her, in accordance with the preceding articles.

#### Art. 106 - Enforceability of obligations

The enforceability of obligations extinguished by death of the absent person is suspended.

#### Art. 107 – Bond

1. The court may require the definitive administrators a bond, to one or some of them, taking into account the type and value of assets and income that they must eventually repay.
2. While not payed the fixed bond, the administrator is unable to receive the assets; they are delivered until the end of the guardianship or until the payment of the deposit, to another heir or other interested party, who will occupy in relation to them, the position of definitive administrator.

#### Art. 108 – Married absent person

If the absent person is married, may the not legally separated from persons and property spouse require inventory and sharing, following the process of justification of absence, and demand the alimony to which he/she is entitled.

#### Art. 109 - Acceptance and rejection of succession; provision of inheritance

1. After justification of the absence, the repudiation of the succession of the absent or the arrangement of his/her inheritance is admitted.
2. The effectiveness of repudiation or arrangement, as well as the acceptance of inheritance or legacy, is, however, subject to the resolutive condition of survival of the absent person.

#### Art. 110 - Rights and obligations of definitive administrators and other interested persons

To the definitive administrators to whom the assets were delivered the provisions set forth in Article 94 apply, becoming extinct those powers which have been previously entrusted by the absent person, regarding the same assets.

#### Art. 111 - Fruition of assets

1. Ascendants, descendants and spouses that are assigned as definitive administrators are entitled, upon delivery of the assets, to all the perceived income.
2. The definitive administrators which are not covered by the preceding must reserve for the absent person one-third of the net income of the assets they manage.

#### Art. 112 - Term of the definitive guardianship

Definite guardianship ends:

- a) With the return of the absent;
- b) With the news of his/her existence and the place where he/she resides;
- c) The certainty of his death;
- d) The declaration of presumed death.

#### Art. 113 - Restitution of assets to the absent

1. In cases a) and b) of the preceding article, the assets of the absent person will be delivered as soon as he/she so requires.
2. While not required, the regime of guardianship under this subsection remains.

### **Subsection III - Presumptive Death**

#### Art. 114 – Requirements

1. Ten years after the date of the latest news, or five years later if the absent person has completed eighty years old, may the parties referred to in art. 100 request a declaration of presumed death.
2. The declaration of presumed death will not be made until five years have passed counting from the date on which the absent, if alive, would reach adulthood.

3. The declaration of presumed death of the absent person does not depend on prior installation of provisional or definitive guardianship, and will refer to the end of the day of the latest news.

#### Art. 115 - Effects

The declaration of presumed death produces the same effects as death, but does not dissolve marriage, without prejudice of the following article.

#### Art. 116 - Remarriage of the spouse of the absent person

The spouse of the civil married absent person can remarry; in this case, if the absent person returns, or there is any news that he/she was alive when the new nuptials were celebrated, the first marriage is considered dissolved by divorce to the date of declaration of presumed death.

#### Art. 117 - Delivery of assets

The delivery of assets to the successors of the absent person is made pursuant to Articles 101 and following, mutatis mutandis, but there is no place to any bond; if the latter has been given, it may be raised.

#### Art. 118 - Death on other date

1. If it is proved that the absent person was dead on a date other than the one mentioned on the judicial sentence of presumed death, the right to inheritance is set upon those that would succeed the absent person, on that date, without prejudice of the rules of adverse possession.
2. The newly assigned successors shall enjoy only, in relation to the former, the rights that are assigned to the absent person in the following article.

#### Art. 119 - Return of the absent person

1. If the absent person returns or any news arise, his/her assets will be refunded to him/her, in the state in which they are, with the price of the sold assets or with the directly subrogated assets, as well as with the assets that were purchased by the price of the alienated ones, when the title acquisition expressly states the provenance of the money.
2. If the successors acted with bad-faith, the absent person is entitled to compensation for suffered damages.

3. Bad-faith consists, in this case, in the knowledge that the absent person survived the presumed date of death.

#### **Subsection IV – Eventual rights of the absent person**

##### **Art. 120 - Rights that overcome the absent person**

Rights that eventually overcome the absent person since his/her disappearance, without news of him/her and that are dependent on the condition of his/her existence, pass to the people who are called to the ownership of those rights if the absent person was dead.

##### **Art. 121 - Provisional and definitive guardianship**

1. The preceding article does not change the regime of provisional guardianship, to which the rights referred to therein are subject.

2. After the establishment of the definitive guardianship, those who would be called to the ownership of the rights under the terms of the same article are deemed as definitive administrators, for all legal purposes.

### **SECTION V – Incapacities**

#### **SUBSECTION I – Juridical condition of minors**

##### **Art. 122 – Minors**

Whoever has not yet reached the age of eighteen is a minor.

##### **Art. 123 - Inability of minors**

Unless otherwise specified, the minors lack capacity to the exercise of their rights.

##### **Art. 124 – Remedying the incapacity of minors**

The incapacity of minors is remedied by the parental custody and, subsidiary, by tutelage, as set forth in the respective sections.

#### Art. 125 - Annulability of the acts of minors

1. Without prejudice of paragraph 2 of Article 287, the juridical businesses concluded by the minor may be canceled:

a) Upon request, as appropriate, of the parent who exercises parental power, of the tutor or the administrator of goods, provided that the action is proposed within one year from the knowledge that the plaintiff has had of the challenged business, but never after the majority of the minor or his/her emancipated, except as provided in Article 131;

b) At the request of the minor itself, within one year from the date of majority or emancipation;

c) By requirement of any heir of the minor, within one year after his death, which occurred before the forfeiture of the term, referred to in the preceding paragraph.

2. The annulment is curable upon confirmation of the minor after reaching the majority or being emancipated, or confirmation of the parent who exercises parental power, tutor or administrator of assets, in the case of any of them could execute such act as the representative of the minor.

#### Art. 126 - Willfull misconduct of the minor

The minor does not have the right to invoke the annulability, which to execute the act, has used willfull misconduct in order to pass as an adult person or emancipated.

#### Art. 127 - Exceptions to the incapacity of minors

1. Are exceptionally valid, as well as other required by law:

a) The acts of administration or disposal of assets that the person aged sixteen has acquired by his/her work;

b) The typical juridical businesses of the day-to-day life of the minor, which being the scope of his natural capacity, only entail costs or disposals of assets of small amounts;

c) Juridical businesses relating to the profession, art or craft, that the minor has been entitled to exercise, or those practiced in the exercise of such profession, art or craft.

2. For the acts relating to the profession, art or craft of the minor and for the acts performed in the exercise of such profession, art or craft, shall only account the assets in which the minor has a free disposal right.

#### Art. 128 - Duty of Obedience

In all which is not illicit or immoral should the non-emancipated minors obey to their parents or guardian and comply with their instructions.

#### Art. 129 - Termination of the incapacity of minors

The incapacity of minors ends when they reach the age of majority or are emancipated, except for the restrictions of the law.

### **Subsection II - Majority and Emancipation**

#### Art. 130 - Effects of age

Whoever reaches eighteen years of age acquires full capacity to exercise rights, being able to govern his/her person and to dispose of his/her assets.

#### Art. 131 - Pending of lawsuit of interdiction or disability

However, being pending against the minor, upon reaching adulthood, an action of interdiction or disability, the paternal power or guardianship shall be maintained until *res judicata* of the respective sentence.

#### Art. 132 – Emancipation

The minor is, ipso facto, emancipated by marriage.

#### Art. 133 - Effects of emancipation

The emancipation attributes the minor full capacity to the exercise of rights, enabling him/her to regulate his/her person and to freely dispose of his/her assets, as if he/she were an adult, except as provided in Article 1649.

Art. 134 – Revoked

(Revoked by Decree-Law No. 496/77, 25/11)

Art. 135 – Revoked

(Revoked by Decree-Law n ° 496/77, 25/11)

Art. 136 – Revoked

(Revoked by Decree-Law n ° 496/77, 25/11)

Art. 137 – Revoked

(Revoked by Decree-Law n ° 496/77, 25/11)

### **Subsection III – Interdictions**

Art. 138 - Persons subject to interdiction

1. It may be interdicted from exercising their rights those who, due to mental disorder, deafness, dumbness or blindness, are unable to govern their person and assets.
2. The interdictions are applicable to adults, but may be required and enacted within the previous year of adulthood, to produce its effects as from the day that in which the minor becomes an adult.

Art. 139 - Capacity of the interdict and interdiction's regime

Notwithstanding the following provisions, the interdicted is equated to the minor, being applicable, *mutatis mutandis*, the provisions which regulate incapacity by minority and set forth the means to remedy parental power.

#### Art. 140 – Competence of common courts

The competence attributed to courts of minors, in provisions which regulate the remedy of parental power, belongs to the court in which the proceeding of interdiction was filled.

#### Art. 141 - Legitimacy

1. The interdiction may be requested by the spouse of the interdicted, by his/her guardian or administrator, by any relative or successor, or by the prosecutor.
2. If the interdicted is under parental authority, only the parents that exercise that power and the public prosecutor have the right to request the interdiction.

#### Art. 142 - Provisional Measures

1. At any point in the process it may be appointed a provisional administrator who executes on behalf of the person to be interdicted, with court approval, the acts whose delay can cause damage.
2. It may also be ordered the provisional interdiction, if there is any urgent need to take measures about the person and the assets of the person to be interdicted.

#### Art. 143 - Who is responsible for the guardianship

1. The guardianship is granted in the following order:
  - a) To the spouse of the interdicted, unless legally separated from persons and assets or separated *de facto*, or incapable by another legal reason.
  - b) To the person appointed by the parents or the parent who holds the parental responsibility, by will or by notarial or certified document;
  - c) To any of the parents of the interdicted who, according to the latter's interest of this, the court designates;

d) To the adult children, preferring the older, unless the court, hearing the family council, understands that any of the other gives greater assurance of good performance of the job;

2. Where it is impossible or relevant reasons inadvised the granting of guardianship pursuant to the preceding paragraph, it is up to the court to appoint a guardian, after hearing the family council.

#### Art. 144 - Exercise of parental power

Falling the guardianship on the father or the mother, the latter exercise parental authority as set forth in Articles 1878 and following.

#### Art. 145 - Special duty of the guardian

The guardian should take special care of the health of the interdicted, being able, for that purpose, to transfer his/her assets once obtained the necessary judicial authorization.

#### Art. 146 - Excuse of guardianship and discharge of the guardian

1. The spouse of the interdicted, and the respective descendants or ascendants may not excuse themselves from the guardianship nor be dismissed, unless there has been a breach of Article 143.

2. The descendants of the interdicted may, however, be dismissed at his/her own request after five years, if there are other descendants also suitable for the exercise of the job.

#### Art. 147 - Advertising of interdiction

The definitive sentence of interdiction is applicable, *mutatis mutandis*, the provisions of Articles 1920-B and 1920-C.

#### Art. 148 - Acts of the interdicted after the registration of the sentence

The juridical businesses executed after the registration of the sentence of definitive interdiction are annulable.

Art. 149 - Acts executed in the course of the lawsuit

1. Are equally annulable the juridical businesses executed by the incapable after the announcement of the filling of the lawsuit according to the procedural law, provided that the interdiction is to be definitely decided and it shown that the business has caused damage to the interdicted.
2. The period within the action for annulment must be brought only starts counting up from the registry of the sentence.

Art. 150 - Acts prior to advertising of the lawsuit

To the businesses executed by the incapable before the announcement of the filling of the lawsuit, shall be applied what is set forth for accidental incapacity.

Art. 151 - Withdrawal of the interdiction

Ceasing the cause which led to the interdiction, the latter may be withdrawn upon the request of the interdicted or of the persons mentioned in paragraph 1 of Article 141.

**Subsection IV – Disabilities**

Art. 152 - Persons subject to disability

It may be subject to disability the individuals whose mental disorder, deafness, dumbness or blindness, although permanent, is not so serious as to justify its interdiction, as well as those that by his usual lavishness or the abuse of alcohol or drugs, are deemed to be unable to properly govern their assets.

Art. 153 – Remedy for disability

1. The disabled are assisted by an administrator, whose authorization is subject to acts of disposal of assets *inter vivos* and those who, bearing in mind the circumstances of each case, are specified in the judicial sentence.
2. The authorization of the administrator may be legally remedied.

#### Art. 154 - Administration of assets of the disabled

1. The administration of assets of the disabled may be attributed by court in whole or in part, to the administrator.
2. In this case, the family council shall be constituted, and the appointment of a member, who, as sub-administrator, exercises the tasks which in the guardianship are attributed to the protutor.
3. The administrator must report his/her administration.

#### Article 155 - Withdrawal of disability

Whenever the inhabilitation is caused by profligacy or abuse of alcohol or drugs, its withdrawal shall not be granted before the elapse of five years from the *res judicata* or of the decision which rejected a previous request.

#### Article 156 - Subsidiary regime

In all that is not specifically regulated in this subsection it is applicable to disability, *mutatis mutandis*, the regime of interdictions.

### **CHAPTER II - LEGAL ENTITIES**

#### **SECTION I - General Provisions**

#### Art. 157 - Scope

The provisions of this Chapter shall apply to associations which have not the purpose of economic gain, to foundations of social interest, and also to Companies when the analogy of the situation so justifies.

#### Art. 158 - Acquisition of personality

1. Associations established by notarial deed or by other legally accepted way, with the specifications referred to in paragraph 1 of Article 167, have legal personality.

2. Foundations acquire legal personality by recognition, which is individual and of competence of the administrative authority.

#### Art 158-A - Nullity of the act of constitution or institution

The provisions of Article 280 are applicable to the establishment of Legal Entities and the public prosecutor should promote the judicial declaration of nullity.

#### Art. 159 - Headquarters

The headquarters of the Legal Entity is that their by-laws set forth or, in the absence of statutory designation, the place where the main administration normally functions.

#### Art. 160 - Capacity

1. The capacity of Legal Entities covers all rights and duties necessary or convenient to achieve their purposes.
2. Exceptions is made to the rights and duties prohibited by law or which are inseparable from singular personality.

#### Art. 161 - Revoked

(Revoked by Decree-Law n ° 496/77, 25/11)

#### Art. 162 - Organs

The by-laws of the Legal Entity shall designate their organs, among them a college management of directors, consisting of an odd number of members, of whom one shall be the chairman, and a supervisory board, with one officer only or an odd number of members, of whom one shall be the chairman.

#### Art. 163 - Representation

1. The representation of the Legal Entity, in and out of court, is up to those who the by-laws determine or, in the absence of statutory provision, to the administration or by whom the latter assigns.

2. The designation of representatives by the administration is only enforceable against third parties when it is proved that they knew about it.

#### Art. 164 - Duties and responsibilities of members of the organs of the Legal Entity

1. The duties and responsibilities of members of the organs of Legal Entities toward these are defined in the respective by-laws, applying, in the absence of statutory provisions, the rules of the mandate, with the necessary adaptations.

2. The members of the managing organs cannot abstain from voting on the resolutions taken at meetings where they are present, and are liable for damages resulting from them, unless they have expressed their disagreement.

#### Art. 165 - Liability of Legal Entities

Legal Entities respond civilly for the acts or omissions of their representatives or agents, in the same way that “comitentes” are liable for the acts or omissions of their commissioners.

#### Art. 166 - Publicity

1. The legal provisions referring to Commercial Companies are applicable to Legal Entities which are regulated in this chapter, regarding the publication of the respective constitution, headquarters, by-laws, composition of social organs, as well as annual reports, duly approved, as well as the statements of the respective supervisory organs.

2. The act of constitution, the by-laws and its amendments do not produce effect relating to third parties, as long as they are not advertised, in terms of the precedent paragraph.

### **SECTION II - Associations**

#### Art. 167 - Act of incorporation and by-laws

1. The act of incorporation of the association shall specify the assets or services with which the members contribute to its social capital, the name, the purpose and headquarters, its way of functioning, as well as its duration, when the association is not constituted for an indefinite period of time.

2. The by-laws may also specify the rights and duties of members, the conditions of their admission, exit and exclusion, as well as the terms of extinction of the Legal Entity and the consequent devolution of its assets.

#### Art. 168 - Form and advertising

1. The act of incorporation of the association, the by-laws and their amendments shall be part of public deed, without prejudice of any special law.

2. The notary shall promote, at the expense of the association, the communication of the constitution and the by-laws, as well as its amendments, in terms legally specified for acts of Commercial Companies.

3. Revoked.

#### Art. 169 - Revoked

(Revoked by Decree-Law n<sup>o</sup> 496/77, 25/11)

#### Art. 170 - Holders of the organs of the association and revocation of powers

1. It is the General Assembly that elects the members of the organs of the association, whenever the by-laws do not establish another process of choice.

2. The functions of the members elected or appointed are revocable, but shall not affect the rights derived from the act of constitution.

3. The right of revocation may be conditioned by the by-laws to the existence of just cause.

#### Art. 171 - Notice and functioning of the board of management and the supervisory board

1. The Board of Management and the Supervisory Board are convened by their chairmen and may act only with the presence of the majority of its members.

2. Unless legal or statutory provision to the contrary, the decisions are taken by majority vote of the members present and the Chairman, in addition to his vote, has a casting vote.

#### Art. 172 - Powers of the General Assembly

1. It competes to the General Assembly all resolutions not included in the legal or statutory duties of other organs of the Legal Entity.

2. Are necessarily of competence of the General Assembly the removal of the organs of the association, the approval of the balance sheet, the amendment of the by-laws, the extinction of the association and the authorization to sue directors for acts performed in office.

#### Art. 173 - Notice of Meeting

1. The General Assembly shall be convened by the board of management in the circumstances laid down by the by-laws and, in any case, once every year for approval of the balance sheet.

2. The meeting will also be convened whenever a summon is required, with a legitimate purpose, by a set of members not less than the fifth part of the whole, if another number is not set in the by-laws.

3. If the board of management fail to call a meeting in cases where should do it, any member may lawfully call the meeting.

#### Art. 174 - Form of notice

1. The General Assembly is convened by postal notice, issued to each member within at least eight days before the meeting; the notice will indicate the date, time and place of the meeting and its agenda.

2. The sending of postal notice is not necessary, as referred in the previous paragraph, whenever the by-laws foresee the convening of the General Assembly through advertising of the respective notice according to the terms legally provided for acts of Commercial Companies.

3. The decisions taken on matters not included on the agenda are annulable, unless all members attended the meeting and all agreed with the amendment.

4. The presence of all members remedies any irregularity of the notice, provided that none of them opposes the holding of the meeting.

#### Art. 175 - Operation

1. The meeting cannot deliberate on first call, without the presence of at least half of its members.
2. Except as provided in the following paragraphs, the decisions are taken by majority vote of members present.
3. Decisions on amendments to the by-laws require the favourable vote of three-fourths of members present.
4. The deliberations on the dissolution or extension of the Legal Entity require the favourable vote of three fourths of all members.
5. The by-laws may require a number of votes higher than that required in the previous rules.

#### Art. 176 - Deprivation of the right to vote

1. The member cannot vote, for him/herself or as representative of others, in matters where there is conflict of interest between the association and him/her, his/her spouse, ascendants or descendants.
2. The decisions taken in violation of the preceding paragraph may be annulled if the vote of the prevented member is essential to the existence of the necessary majority.

#### Art. 177 - Resolutions contrary to law or by-laws

The resolutions of the General Assembly which are contrary to law or by-laws, either by its object, either by virtue of irregularities incurred in calling members of the assembly or in its operation, are annulable.

#### Art. 178 - Regime of annulability

1. The annulability provided for in previous articles can be evoked within a period of six months, by the management organ or by any member who has not voted on the resolution.
2. In the case of a member who was not regularly summoned to the meeting of the Assembly, the period begins to run only from the date on which he/she became aware of the decision.

#### Art. 179 - Protection of third party rights

Annulment of the decisions of the Assembly shall not affect any *bona fide* rights which third party has acquired in pursuance of the deliberations which were annulled.

#### Art. 180 - Personal nature of quality member

Unless statutory provision to the contrary, the membership is not transferable, either *inter vivos* or by succession; the member cannot instruct others to exercise his/her personal rights.

#### Art. 181 - Effects of exit or exclusion

The member, who, by any way, ceases to belong to the association, has no right to repeat the contributions already paid and loses the right to the corporate assets, without prejudice to its liability for all instalments relating the time in which he/she was a member of the association.

#### Art. 182 - Grounds for extinction

1. The associations are extinguished:

- a) By resolution of the General Assembly;
- b) By the forfeiture of the term, if they have been set up temporarily;
- c) By the occurrence of any other cause of extinction provided for in the act of constitution or in by-laws;
- d) By death or disappearance of all members;
- e) By a court decision declaring its insolvency.

2. The associations are extinguished even by court order:

- a) When its purpose has been exhausted or has become impossible;
- b) When its real purpose does not coincide with the purpose expressed in the articles of association or in by-laws;
- c) When its purpose is systematically pursued by unlawful or immoral means;

d) When its existence becomes contrary to public policy.

#### Art. 183 - Declaration of extinction

1. In cases b) and c) of paragraph 1 of the preceding article, the extinction will only have effect if, within thirty days following the date on which it should operate, the General Assembly does not decide the extension of the association or the modification of the by-laws.

2. In the cases provided for in paragraph 2 of the preceding article, the declaration of extinction can be requested in court by the public prosecutor or by any interested party.

3. The extinction by virtue of the declaration of insolvency occurs in consequence of the declaration itself.

#### Art. 184 - Effects of extinction

1. Extinguished the association, the powers of its organs shall be limited to the practice of merely conservatories and necessary acts, whether the liquidation of the company assets, or to the finalization of outstanding businesses; by the remaining acts and the damage they produce, the directors are joint and severally liable for that practice.

2. By the obligations that the directors contracts, the association only answers to third parties if they were in good-faith and extinction has not been given due publicity.

### **SECTION III - Foundations**

#### Art. 185 - Institution and its revocation

1. Foundations aim at pursuing a social purpose and may be established by an act *inter-vivos* or by will.

2. The institution by act *inter-vivos* shall be made in public deed and becomes irrevocable as soon as recognition is sought or its ex-officio procedure begins.

3. The heirs of the founder are not allowed to revoke the institution, without prejudice about legitimate succession.

4. To the act of constitution of the foundation, when comprised in a public deed, as well as to its by-laws and amendments, the provisions of Article 166 are applicable.

#### Art. 186 - Act of institution and by-laws

1. In the act of constitution must the founder indicate the purpose of the foundation and specify the assets that are comprised therein.
2. At the time of the institution or in the by-laws may the founder set forth the headquarters, organization and operation of the foundation, regulate the terms of its transformation or extinction and fix the purpose of the assets.

#### Art. 187 - By-laws issued by someone other than the settlor

1. In the absence of by-laws issued by the founder or on the lack of them, stating the respective institution in a will, the executors of this will are deemed to draft them or complete them.
2. The preparation of all or part of the by-laws rests with the competent authority itself to the recognition of the foundation, when the founder has not made them and the institution is not included in will, or when the executors do not issue them within one year of the opening of the succession.
3. In drafting the by-laws one will have into account, to the extent possible, the real or presumed will of the founder.

#### Art. 188 - Recognition

1. The recognition shall be required by the founder, his heirs or executors, within 180 days from the date of the founding of the institution, or be automatically promoted by the competent authority.
2. The recognition implies the acquisition, by the foundation, of the assets and rights that the act of institution attributes.
3. The recognition may be denied:
  - a) If the purpose of the foundation is not considered of social interest by the competent authority, namely, if profiting the founder or his family or a restricted universe of beneficiaries relating thereto;
  - b) If the set of assets affected is insufficient or inappropriate, particularly if it is encumbered burdened with charges that affect the achievement of the statutory purposes or does not generate enough income to ensure the achievement of those purposes;

c) If the by-laws show some inconsistency with the law.

4 - The competent authority for the recognition promotes the publication in the Official Gazette at the expense of the foundation, of the recognition decision, of the act of institution and of the by-laws and amendments thereto, without which such acts have no effect against third parties.

5. Refused the recognition for lack of assets, the institution shall have no effect if the settlor is alive; but if he has already deceased, the assets will be delivered to an association or foundation with similar purposes, designated by the competent authority, unless stated otherwise by the founder.

#### Art. 189 - Modification of by-laws

The by-laws of the foundation may be modified at any time by the competent authority for the recognition, under proposal of the respective board of management, provided there is no fundamental change in the order of the institution and is not contrary to the will of the founder.

#### Art. 190 - Transformation

1. Having heard the administration, and also the founder, if alive, the competent authority for the recognition can expand the purposes of the foundation, whenever the social profitability of available assets advises so.

2. The same entity may, after the hearings provided for in the preceding paragraph, assign a different ending to the foundation:

a) When the purpose for which it was established has been completely filled or this has become impossible;

b) When the order of the institution fails to have a social interest;

c) When the assets become insufficient to achieve the intended purpose.

3. The new purpose must approach, where possible, the purpose set by the founder.

4. There is no place to change the purpose if the act of constitution prohibits it or if it limits the extinction of the foundation.

#### Art. 190-A - Merger

On proposal of the respective administrations, or alternatively to the decision referred to in Paragraph 2 of the preceding article, and after the hearings provided for in Paragraph 1 of the same Article, the competent authority for the recognition can determine the merger of two or more foundations, with similar purposes, provided that to such does not oppose the will of the founders.

#### Art. 191 - Detrimental charge to the purposes of the foundation

1. Once the assets of the foundation are encumbered with charges which compliance prevent or seriously impede the fulfilment of the institutional purpose, can the competent authority for recognition, under proposal of the administration, cancel, reduce or commute those charges, after being heard the founder, if alive.
2. However, if the encumbrance has been an essential motive of the institution, the same entity may consider its performance as the purpose of the foundation, or incorporate the foundation into another Legal Entity, capable to meet the encumbrance at the expense of corporate assets, without prejudice to its own purposes.
3. Foundations can only accept inheritances for the benefit of inventory.

#### Art. 192 - Grounds for extinction

1. The foundations are extinguished:
  - a) Upon forfeiture of the term, if they have been set up temporarily;
  - b) By the occurrence of any other cause of extinction foreseen at the time of institution;
  - c) By a court decision declaring its insolvency, if it is not admissible the continuity of the foundation.
2. Foundations can also be extinguished by the competent authority for recognition:
  - a) When their purpose has been exhausted or has become impossible;
  - b) When activities rendered show that the real purpose does not match the purpose expressed in the act of constitution;
  - c) When they have not developed any relevant activity in the previous three years.
3. Foundations can also be extinguished by court decision, in action brought by the public prosecutor or the competent authority for recognition:

- a) When their purpose is systematically pursued by unlawful or immoral means;
- b) When their existence becomes contrary to public order.

#### Art. 193 - Declaration of extinction

When there is any extinctive cause provided in Paragraph 1 above, the administration of the foundation shall so inform the competent authority for the recognition, in order for it to declare the extinction.

#### Art. 194 - Effects of extinction

1. The extinction of the foundation triggers the opening of the liquidation of its assets, competing to the competent authority for the recognition to make the proper arrangements that it sees fit.
2. In the absence of special provisions to the contrary, the provisions of Article 184 are applicable.

### **CHAPTER III - Associations without juridical personality and special committees**

#### Art. 195 - Organization and management

1. To the internal organization and management of associations without juridical personality the rules established by members are applicable and, in its absense, the legal provisions relating to associations, except those that assume the personality of these associations.
2. The limitations imposed on the normal powers of the directors are only enforceable against the third when he/she knew or should have known about those.
3. To the exit of members shall apply the provisions of Article 181.

#### Art. 196 - Common fund of associations

1. The contributions of members and the assets purchased with them are the common fund of the association.

2. While the association subsists, no member may request the division of the common fund and no creditor of the members have the right to do foreclose.

#### Art. 197 - Donation

1. Donation on behalf of associations without juridical personality shall refer to the respective members, as such, unless the author has conditioned the donation to the acquisition of juridical personality; in this case, whether such acquisition is not made within a year, the disposition has no effect.

2. Possessions left behind or donated to the association without juridical personality are added to the common fund, regardless of another act of transmission.

#### Art. 198 - Liability for debts

1. By the obligations validly assumed on behalf of the association the common fund is liable and, in the absence or insufficiency of the latter, the assets of that who has contracted those obligations; if the act is exercised by more than one person, they shall all jointly respond.

2. In the absence or insufficiency of the common fund and the assets of the members directly responsible, lenders have recourse against the remaining members, who respond proportionately to their entry to the common fund.

3. The legal representation of the common fund fits those who have assumed the obligation.

#### Art. 199 - Special Committees

The committees constituted to carry out any bailout or charity, or to promote the execution of public works, monuments, festivals, exhibitions, festivals and similar acts, if do not ask for recognition of the personality of the association or do not obtain it, are subject, in the absence of law to the contrary, to the following provisions.

#### Art. 200 - Liability of organizers and directors

1. Committee members and those in charge of managing its funds are jointly and severally responsible for the conservation of collected funds and their allocation to the announced purpose.

2. The committee members also respond, jointly and severally, for the obligations on its behalf.
3. The subscribers may require only the amount they have subscribed when, for whatever reason, the purpose for which the committee was formed fails.

#### Art. 201 - Application of assets to another purpose

1. If the funds raised are insufficient for the announced purpose, or this proves impossible, or any balance remains after satisfaction of the purpose of the commission, the assets will have the intended application as foreseen on the act of constitution of the commission or on the advertised program.
2. If no application has been scheduled and the committee does not want to apply the assets to a similar purpose, it is the administrative authority which provides on their destination, respecting as far as possible the intention of the subscribers.

#### Art. 201-A - Advertising

Associations and special committees without juridical personality promote the publication of its constitution, its headquarters and its program, in the terms provided by law for the acts of Commercial Companies.

### **SUBTITLE II - Things**

#### Art. 202 - Notion

1. Thing is everything which may be object of juridical relations.
2. However, all things which cannot be object of private rights are considered to be out of trade, such as those found in the public domain and which are, by their nature, incapable of individual appropriation.

#### Art. 203 - Classification of things

Things are immovable or movable, simple or compound, fungible or non-fungible, consumable or non-consumable, divisible or indivisible, principal or accessory, present or future.

#### Art. 204 - Immovable things

1. Are immovable things:

a) The rural and urban buildings;

b) The waters;

c) The trees, shrubs and natural fruits, while attached to the ground;

d) The rights inherent to immovable assets mentioned in the previous paragraphs;

e) The integrant parts of the rural and urban buildings.

2. It is deemed a rural building a delimited part of the soil and the existing constructions therein which are not economically independent, and by urban building, any building incorporated into the soil with the land that will serve as a patio.

3. It is an integrant part of the movable assets all movable thing physically connected to the building, with permanent nature.

#### Art. 205 - Movable assets

1. Are movable all things not comprised in the previous article.

2. To movable things subject to public record is applicable the regime of movables things in everything that is not specifically regulated.

#### Art. 206 - Compound things

1. It is regarded as a compound thing, or universality of fact, the plurality of movable things which, belonging to the same person, have a unitary destination.

2. Simple things that constitute the universality may be subject to proper juridical relations.

#### Art. 207 - Fungible things

Are fungible the things that are determined by their type, quality and quantity, when they are subject of juridical relations.

#### Art. 208 - Consumable things

Are consumable the things which regular use leads to their destruction or transfer.

#### Art. 209 - Divisible things

Are divisible the things that can be divided without changing their substance, decrease of value or damage, for the purpose for which they are intended.

#### Art. 210 - Accessory things

1. Are accessory things, or belongings, the movable things which, not constituting integrant parts, are permanently allocated to the service or ornamentation of another thing.
2. The juridical businesses that relate to the main thing do not cover, unless stated otherwise, the accessory things.

#### Art. 211 - Future things

Are future things those which are not held by the disposer, or those that the disposer is not entitled to, at the time of the declaration of negotiation.

#### Art. 212 - Income

1. It is considered income of one thing everything it periodically produces without prejudice of its substance.
2. The income is natural or civil; it is said to be natural the income which arises directly from the thing, and civil income the rents or interests that the thing produces, as a result of a juridical relationship.
3. It is deemed income of the universality of animals the young animals not intended to replace the heads that, by any cause, may be missing, as well as the spoils and all earned revenues, even on an eventual basis.

#### Art. 213 - Sharing of the income

1. Those who are entitled to natural income up to a given time or after that certain time, make theirs all the income received during the duration of its right.
2. As for civil income, the sharing is proportionally made to the duration of the right.

#### Art. 214 - Prematurely obtained income

Whoever receives natural income prematurely is bound to restore them, should his/her right be extinguished before the regular season crops.

#### Art. 215 - Return of income

1. Whoever is obliged by law to return received income has a right to a compensation for the costs of cultivation, seeds and raw materials and other costs of production and harvest, provided they do not exceed the value of this income.
2. Regarding income to be received, the one bound to deliver the thing is not entitled to any compensation, except in cases specially set forth by law.

#### Art. 216 - Improvements

1. It are deemed improvements all expenditures made to maintain or to improve the thing.
2. Improvements are necessary, useful or voluptuous.
3. Are necessary improvements those which envisage to prevent the loss, destruction or deterioration of the thing; useful those which, not being essential for their conservation, will increase, however, the value; voluptuous those which are not essential for the conservation or to increase the value, serving only to the pleasure of the one who made the improvements.

### **SUBTITLE III - Juridical facts**

#### **CHAPTER I - Juridical business**

#### **SECTION I - Declaration of negotiation**

#### **SUBSECTION I - Types of declaration**

#### Art. 217 - Expressed declaration and tacit declaration

1. The business declaration may be expressed or tacit: it is expressed, when made by words, writing or any other means of direct expression of the will, and tacit, when it results from facts that, in all probability, reveal it.

2. The formal nature of the declaration does not prevent it from being tacitly issued, to the extent the form has been observed regarding the facts that the declaration concludes.

#### Art. 218 - Silence as a declarative means

Silence has the value of a business declaration, when such value is assigned by law, use or convention.

### **Subsection II - Form**

#### Art. 219 - Freedom of form

The validity of the business declaration does not depend on the observance of special form, except when the law requires it.

#### Art. 220 – Non observance of legal form

The business declaration which lacks the legally prescribed form is null, when no other sanction specifically provided for in the law.

#### Art. 221 - Scope of legal form

1. Accessory verbal stipulations previous to the legally required document for the business declaration, or its contemporary, are null, except when the underlying reason of the form does not apply to them and it is proved that they correspond to the will of the author of the declaration.

2. The stipulations issued after the document are subject to the legally prescribed form for the declaration only if the reasons for the special requirement of the law are applicable thereto.

#### Art. 222 - Scope of voluntary form

1. If the written form is not required by law, but has been adopted by the author of the declaration, accessory verbal stipulations prior to the written document, or its contemporary, are valid, if it is shown that they correspond to the will of the declarant and the law does not subject them to a writing form.
2. Verbal stipulations posterior to the document are valid, unless, for this purpose, the law requires the written form.

#### Art. 223 - Conventional Form

1. The parties may agree on a special form for the declaration; it is presumed, in this case, that the parties want to bind themselves only by the manner agreed upon.
2. If, however, the form is only agreed after the business is completed or at the time of its completion, and there are grounds to believe that the parties wanted to bind themselves right from the start, it is assumed that the convention was aimed at consolidating the business, or any other effect, but not its replacement.

### **Subsection III - Perfection of business declaration**

#### Art. 224 - Effectiveness of business declaration

1. The business declaration which has a recipient becomes effective as soon as it reaches him/her or it is known by him/her; the others, as soon as the will of the declarant is manifested in an appropriate manner.
2. It is also considered effective the declaration that only by fault of the recipient was not timely received by him/her.
3. The declaration received by the recipient in conditions of, without his/her fault, not being known by him/her, is ineffective.

#### Art. 225 - Public notice of the declaration

The declaration can be presented by public notice published in the newspapers of the residence of the declarant, when it is aimed at unknown people or when the whereabouts are unknown or ignored by the former.

#### Art. 226 - Death, incapacity or supervening unavailability

1. The death or incapacity of the declarant, after the issue of the declaration, shall not affect it, unless otherwise results from the declaration itself.
2. The declaration is ineffective if the declarant, while the recipient does not receive it or is not aware of it, loses the power of disposal of the right to which it refers.

#### Art. 227 - Fault on the formation of contracts

1. Who negotiates with others to complete a contract must, both in primary proceedings and in the formation of the contract, proceed according to the rules of good-faith, under penalty of liability for acts which with fault cause damage to the other party.
2. The liability prescribes under the terms of Article 498.

#### Art. 228 - Duration of the contract proposal

1. The contract proposal obliges the declarant as follows:
  - a) If it is determined by the proponent, or agreed by the parties, a deadline for the acceptance, the proposal remains until the ending of the period;
  - b) If there is no fixed term, but the proponent asks for an immediate response, the proposal remains until, in normal conditions, this one and the acceptance reach their destination;
  - c) If there is no fixed term and the proposal is made to an absent person or, in writing, to a person present, it will remain within five days after the deadline that results from the manner provided in the preceding paragraph.
2. The preceding paragraph does not prejudice the right of withdrawal of the proposal under the terms in which revocation is permitted in Article 230.

#### Art. 229 - Late reception

1. If the proponent receives the acceptance late, but does not have reason to suppose that it was issued out of time, he/she must immediately notify the acceptor that the contract was not completed, under penalty of being liable for the occurred damage.
2. The proponent may, however, consider effective the late reply, as long as it has been issued in due time; in any other case, the formation of the contract depends on a new proposal and a new acceptance.

#### Art. 230 - Irrevocability of the proposal

1. Unless otherwise stated, the contract proposal is irrevocable after being received by the recipient or after being known to him/her.
2. If, however, at the same time of the proposal, or prior to it, the recipient receives the withdrawal of the proponent or has knowledge of it by other means, the proposal has no effect.
3. The revocation of the proposal, when directed to the public, is effective, provided it is done in the form of the offer or in another equivalent form.

#### Art. 231 - Death or disability of the proponent or the recipient

1. The death or disability of the proponent does not prevent the conclusion of the contract, unless if there are grounds to assume that another would have been his/her will.
2. The death or incapacity of the recipient determines the ineffectiveness of the proposal.

#### Art. 232 - Scope of the agreement of wills

The contract is not complete until the parties have not agreed on all the terms on which any of them has felt a necessary agreement.

#### Art. 233 - Acceptance with modifications

The acceptance with additions, limitations or other modifications implies the rejection of the proposal; but, if the change is sufficiently precise, it is equivalent to a new proposal, as long as it does not result another meaning from the declaration.

#### Art. 234 - Waiver of declaration of acceptance

When the proposal, the nature or circumstances of the business, or uses turn the declaration of acceptance dispensable, the contract is considered completed as soon as the conduct of the other party shows an intention to accept the proposal.

#### Art. 235 – Revocation of the acceptance or of the rejection

1. If the recipient rejects the proposal, but later accepts it, the acceptance prevails, as long as it reaches the proponent, or it is known to him/her, at the same time of the rejection, or before.
2. The acceptance may be revoked by declaration which, at the same time, or before, reaches the proponent or it is known by him/her.

#### **Subsection IV - Interpretation and integration**

#### Art. 236 - Normal meaning of the declaration

1. The business declaration is worth with the sense that a regular addressee, placed in the position of the real recipient, can deduce from the behavior of the declarant, unless the latter can not reasonably rely on the former.
2. Whenever the recipient knows the real intention of the declarant, the issued declaration is valid according to it.

#### Art. 237 - Doubtful cases

In case of doubt about the meaning of the declaration prevails, in non onerous businesses, the least restrictive for the disposer and, in onerous businesses, the one which leads to a greater balance of the performance.

#### Art. 238 - Formal Businesses

1. In formal businesses the declaration can not prevail with a meaning that does not have a minimum match with the text of the document, however imperfectly expressed.

2. This meaning may, however, apply, if it corresponds to the genuine intent of the parties and the reasons for determining the form of the business do not preclude such validity.

#### Art. 239 - Integration

In the absence of a special provision, the business declaration must be integrated in accordance with the will of the parties which would have had if they had foreseen the silent issue, or according to the dictates of good-faith, when other is the solution imposed by them.

### **Subsection V - Lack and vices of will**

#### Art. 240 - Simulation

1. If, by agreement between the declarant and the recipient, and with the purpose of misleading others, there is divergence between the business declaration and the actual intention of the declarant, the business is said to be simulated.

2. The simulated business is null.

#### Art. 241 - Relative simulation

1. When under the simulated business there is another business that the parties wanted to accomplish, it is applicable to the latter the regime that would correspond to it if it were to be completed without concealment; its validity is not affected by the invalidity of the simulated business.

2. If, however, the simulated business is of formal nature, it is valid only if it observes the form required by law.

#### Art. 242 - Legitimacy to argue simulation

1. Without prejudice of Article 286, the nullity of the simulated business can be argued by the simulators between themselves, even though the simulation is fraudulent.

2. Nullity may also be invoked by the legitim heirs wishing to act during life of the author of the succession, against businesses made by the latter, in order to harm them.

#### Art. 243 – Non opposition of the simulation to *bona fide* third parties

1. Nullity from the simulation can not be raised by the simulator against *bona fide* third parties.
2. Good-faith (*bona fide*) consists on the unawareness of the simulation at the time of constitution of the respective rights.
3. It is always considered of bad-faith the third party who acquired the right after the registration of the action of simulation, when it occurs.

#### Art. 244 - Mental reservation

1. There is a mental reservation whenever is issued a declaration which is contrary to the real intention, with the intention of deceiving the recipient.
2. The reservation does not affect the validity of the declaration, unless is known by the recipient; in this case, the reservation has the effects of simulation.

#### Article 245 - Non-serious declarations

1. The non-serious declaration, made in the expectation that the lack of seriousness is not unknown, lacks any effect.
2. If, however, the declaration is made under circumstances that induce the recipient to justifiably accept its seriousness, he/she has the right to be compensated for suffered damages.

#### Article 246 - Lack of awareness of the declaration and physical coercion

The declaration has no effect if the declarant does not have the consciousness of being doing a business declaration or is coerced by physical force to issue it; but, if the lack of consciousness of the declaration was due to guilt, the declarant is obliged to compensate the recipient.

#### Art. 247 - Error in declaration

When, by reason of error, the declared will does not match the actual intention of the author, the business declaration is annulable, so long the recipient knew or should not ignore the essentiality, to the declarant, of the element upon which the error was focused.

#### Art. 248 - Validation of the business

The annulability founded on error on the declaration does not proceed if the declaratee accepts the business, as the declarant wanted to.

#### Art. 249 - Miscalculation or error in writing

The simple miscalculation or error in writing which is revealed in the context of the declaration or through the circumstances in which the declaration is made, only entitles to the rectification of the declaration.

#### Art. 250 - Error in transmission of the declaration

1. The business declaration inaccurately transmitted by who is entrusted of the transmission may be canceled under Article 247.
2. When, however, the inaccuracy is due to willful misconduct of the intermediary, the declaration is always annulable.

#### Art. 251 - Error on the person or on the object of the business

The error that reaches the determining reasons of the will, when it refers to the person of the recipient or to the object of the business, becomes annulable under Article 247.

#### Art. 252 - Error on motives

1. The error that falls on the determining reasons of the will, but does not refer to the person of the recipient or the object of the business, it is cause of annulability only if the parties have recognized, by agreement, the essentiality of the motive.
2. If, however, it falls on the circumstances which form the basis of the business, the provisions concerning the resolution or modification of the contract, by change of circumstances at the time when the business was completed, are applicable to the error of the declarant.

#### Art. 253 - Willfull misconduct

1. It is considered willfull misconduct any suggestion or maneuver that someone uses with the intention or awareness of inducing or maintaining an error in the author's declaration, as well as its concealment, by the recipient or a third person, about the error of the declarant.

2. It does not constitute unlawful misconduct the usual suggestions or maneuvers considered legitimate according to the dominant conceptions on juridical trade, nor the concealment of the error, when no duty to elucidate the declarant results from the law, from business stipulation or from those notions.

#### Art. 254 - Effects of willfull misconduct

1. The declarant whose will has been determined by willfull misconduct can annul the declaration; the annullability is not precluded by the fact that the willfull misconduct is bilateral.

2. When the willfull misconduct comes from a third party, the declaration is annulable only if the recipient knew or should have known about it; but, if anyone has directly acquired any right by virtue of the declaration, this one is annulable regarding the beneficiary, if he/she was the author of the willfull misconduct or if he/she knew about it or should have known it.

#### Art. 255 - Moral coercion

1. It is said to be made under moral coercion the business declaration determined by fear of a harm that the declarant was unlawfully threatened in order to get his/her declaration.

2. The threat can relate both to the person as to the honor of the declarant or of a third party.

3. It is not coercion the threat of the normal exercise of a right or the simple reverential fear.

#### Art. 256 - Effects of coercion

The business declaration extorted by coercion is annulable, even if it comes from a third party; in this case, however, the evil must be serious and the fear of its consummation must be justifiable.

#### Art. 257 - Accidental incapacity

1. The business declaration made by who, due to any cause, was accidentally unable to understand the meaning of it or did not have the free exercise of his/her will, is annulable, if such fact is known or notorious to the recipient.
2. The fact is known when a person of ordinary diligence would have noticed it.

### **Subsection VI - Representation**

#### **DIVISION I - General Principles**

##### Article 258 - Effects of representation

The juridical business performed by the representative on behalf of the represented, within the limits of power of the former, produces its effect on the juridical sphere of the latter.

##### Article 259 - Lack or vices of will and relevant subjective states

1. With the exception of the elements in which the will of the represented person was decisive, it is in the person of the representative that shall be verified, for the purposes of nullity or annulability of the declaration, the lack or vice of will, as well as the knowledge or unawareness of the facts that may influence the effects of the business.
2. To the represented person in bad-faith, the good-faith of the representative person does not benefit the represented person.

##### Art. 260 - Justification of the powers of the representative person

1. If a person addresses a declaration to a third party, on behalf of another person, may that third party require that the representative, within a reasonable time, makes proof of his/her authority, otherwise the declaration may not take effect.
2. If the powers of representation are contained in a document, the third party may require a copy of it, signed by the representative.

##### Article 261 - Business with oneself

1. It is annulable the contract celebrated by the representative person with him/herself, either in his/her own name, either on behalf of a third party, unless the represented person has specifically consented on the conclusion, or that the business, by its nature, excludes the possibility of a conflict of interest.

2. It is considered to be executed by the representative person, for the purpose of the preceding paragraph, the business which has been done by who holds the powers of representation.

## **DIVISION II - Voluntary representation**

### **Art. 262 - Proxy**

1. It is said proxy the act by which one attributes representative powers to others, voluntarily.

2. Unless otherwise provided by law, the proxy will take the form required for the business that the attorney should perform.

### **Art. 263 - Capacity of the attorney**

The attorney does not need to have more than the ability to understand and to want, which is required by the nature of the business to perform.

### **Art. 264 - Replacement of attorney**

1. The attorney can only be replaced by another if the represented person allows it or if the faculty of replacement results from the content of the proxy or from the juridical relation that determines it.

2. The substitution does not involve the exclusion of the original attorney, unless stated otherwise.

3. Being authorized the replacement the attorney is liable only towards the represented person if he/she has acted with fault in choosing the replacement, or with fault on the instructions he/she gave.

4. The attorney can be assisted on the execution of the proxy, if something else does not result from the business or from the nature of the act that he/she must execute.

#### Art. 265 - Extinction of proxy

1. The proxy shall expire when the attorney resigns to it, or when the juridical relation on which it is based ceases, unless another is, in this case, the will of the represented person.
2. The proxy is freely revocable by the represented, notwithstanding a contrary agreement or waiver of the right of revocation.
3. But, if the proxy has been granted also in the interests of the attorney or third party, it cannot be revoked without the consent of the concerned person, unless there is just cause.

#### Art. 266 - Protection of third parties

1. Modifications and revocation of proxy must be brought to the knowledge of third parties by adequate means; otherwise they are not enforceable, unless it is shown that they were aware of them at the time of completion of the business.
2. The remaining causes of extinction of proxy cannot be opposed to a third party who, without fault, has ignored them.

#### Art. 267 - Restitution of the document of representation

1. The representative person must return the document in which his/her powers are stated, once the proxy has expired.
2. The representative person does not hold the right to retain the document.

#### Art. 268 - Representation without powers

1. The business that a person, without powers of representation, celebrates on behalf of other is ineffective in relation to the latter, if not ratified by him/her.
2. The ratification is subject to the form required for the proxy and has retroactive effect, without prejudice of the rights of third parties.
3. The ratification is considered denied if not made within the time that the other party set for this purpose.
4. While the business is not ratified, the other party has the right to reject or revoke it, unless, at the time of completion, he/she knew the lack of powers of the representative person.

#### Art. 269 - Abuse of representation

The preceding article shall apply to the case when the representative person has abused of his/her powers, if the other party knew or should have known about the abuse.

### **Subsection VII - Condition and term**

#### Art. 270 - Notion of condition

The parties may subordinate to a future and uncertain event the production of effects of the juridical business or its resolution: in the first case, it is said to be a suspensive condition; in the second case, it is said to be a resolutive condition.

#### Art. 271 - Illicit or impossible conditions

1. It is null the juridical business subject to a condition contrary to law or to public order, or offensive to good manners.
2. It is also null the business subject to a suspensive condition which physically or legally impossible; if resolutive, the condition is taken as not written.

#### Art. 272 - Pending of the condition

Whoever contracts an obligation or transfers a right under a suspensive condition, or acquires a right under a resolutive condition must act, pending the condition, according to the dictates of good-faith, so that he/she does not compromise the integrity of the right of the other party.

#### Art. 273 - Pending condition: conservative acts

On the pending of the suspensive condition, the acquirer of the right may practice conservative acts; the debtor or the conditional seller may also perform them, on the pending of the resolutive condition.

#### Art. 274 - Pending condition: dispositive acts

1. The acts of disposition of assets or rights which are the object of the conditional business, executed under the pending of the condition, are subject to the effectiveness or ineffectiveness of the business itself, unless otherwise stipulated.
2. If there is room for the restitution of what has been alienated, is applicable, directly or by analogy, the provisions of Articles 1269 and following, in relation to the possessor of good-faith.

#### Art. 275 – Verification and non-verification of the condition

1. The certainty that the condition can not be verified is equivalent to its non-verification.
2. If the verification of the condition is prevented, against rules of good-faith, by whom it damages, it is considered as verified; if provoked, on the same terms, by who takes advantage of it, it is considered as unverified.

#### Art. 276 - Retroactivity of the condition

The effects of fulfilment of the condition are backdated to the date of completion of the business, unless by consent of the parties or the nature of the act, must report to another period in time.

#### Art. 277 - Non-retroactivity

1. Being affixed a resolutive condition to a contract of continuous or periodical execution, the provisions in paragraph 2 of Art. 434 are applicable.
2. The fulfilment of the condition does not affect the validity of the performance of acts of ordinary administration, while the condition is pending, by the party which is entrusted the exercise of the right.
3. To the acquisition of income by the party referred to in the preceding paragraph, the provisions relating to the acquisition of income by the possessor in good faith are applicable.

#### Art. 278 - Termination

If it is stipulated that the effects of the juridical business start or end after a certain time, is applicable to the stipulation, mutatis mutandis, the provisions of Articles 272 and 273.

#### Art. 279 - Counting of the term

To the fixation of the term one applies, in case of doubt, the following rules:

- a) If the term refers to the beginning, middle or end of the month, it is understood as such, respectively, the first day, the day 15 and the last day of the month; if it is set at the beginning, middle or end of the year it means, respectively, the first day of the year, June the 30<sup>th</sup> and December the 31<sup>st</sup>;
- b) When counting any period, one does not include the day nor the hour, if the term is of hours, in which occurs the event starting from which the period begins to run;
- c) The period expressed in weeks, months or years from the date of certain date, ends at midnight of the day which corresponds, within the last week, month or year, to that date; but, in the last month there is no corresponding day, the period shall end on the last day of that month;
- d) It is considered, respectively, as one or two week's period, the periods designated for eight or fifteen days, respectively; the period of one or two days is designated for 24 or 48 hours;
- e) The period that ends on a Sunday or holiday is moved to the first week day; Sundays and public holidays are treated as like the judicial vacations, if the act subject to term has to be practiced before court.

### **SECTION II - Negotiation object. Usurious businesses**

#### Art. 280 - Requirements of the negotiation object

1. The juridical business whose object is physically or legally impossible, contrary to law or indeterminable is null.
2. The business contrary to public order or offensive to good manners is null.

#### Art. 281 - Purpose contrary to law or public order or offensive to good manners

If only the purpose of the juridical business is contrary to law or public order, or offensive to good practices, the business is null only when the purpose is common both parties.

#### Art. 282 – Usurious businesses

1. The juridical business is annulable, by usury, when someone, exploring the situation of need, inexperience, lightness, addiction, mental state or weakness of character of others, obtains from the latter, for himself or for a third party, the promise or the granting of excessive benefits or unjustified.
2. The special regime established in Articles 559-A and 1146 shall remain protected.

#### Art. 283 - Modification of usurious businesses

1. Instead of annulling, the injured party may request the amendment of the business with recourse to equity.
2. After the request of the annulment, the other party has the right to oppose the request, stating the acceptance of the modification of business pursuant to the preceding paragraph.

#### Art. 284 - Criminal usury

When the usurious business constitutes a crime, the period for exercising the right of annulment or modification does not end while the crime does not prescribe; and, if the criminal liability is extinguished because of a different cause of the prescription or if in criminal court a final judgement is rendered, that period shall run from the date of termination of criminal responsibility or from that in which the judgment has been handed down, unless one must count it from a posterior period, by virtue of paragraph 1 of Article 287.

### **SECTION III - Nullity and annulability of the juridical business**

#### Art. 285 - General Provision

In the absence of a special regime, one shall apply to the nullity and annulability of juridical businesses the provisions of the succeeding articles.

#### Art. 286 - Nullity

The nullity is invoked at any time by any interested party and may be declared by court *ex officio*.

#### Art. 287 - Annulability

1. The only persons that have the legitimacy to invoke annulability those in whose interest the law provides, and only within the year following the cessation of the vice that grounds it.
2. However, while the business is not performed, the annulability may be raised without dependence on time, as much by action or by way of exception.

#### Art. 288 - Confirmation

1. The annulability is remedied upon confirmation.
2. The confirmation is entrusted to the person to whom the right of annulment belongs, and is effective only when it is posterior to the cessation of the vice that is the basis of the annulability and its author has knowledge of the vice and of the right to the annulment.
3. The confirmation may be expressed or tacit and does not depend on any special form.
4. The confirmation has retroactive effect, even for a third party.

#### Art. 289 - Effects of the declaration of nullity and annulment

1. Both the declaration of nullity and the annulment of the business have retroactive effect and shall be refunded all that has been provided or, if the restitution in kind is not possible, the corresponding value.
2. Having any of the parties freely transferred a thing that should be returned and not being able to become effective against the seller the refund of its value, the purchaser becomes forced, in place of the former, but only to the extent of his/her enrichment.
3. It is applicable in any of the cases provided for in the preceding paragraphs, directly or by analogy, the provisions of Articles 1269 and following.

#### Art. 290 - Moment of restitution

The reciprocal obligations of restitution that the parties are incumbent of by virtue of nullity or annulability of the business must be met simultaneously, being extended to the case, on the applicable portion, the provisions related with the exception of breach of contract.

#### Art. 291 – Non opposition of nullity and annulment

1. The declaration of nullity or annulment of the juridical business which respects to immovable assets, or to movable assets subject to registration, do not prejudice the rights acquired on those same assets, on a costly basis, by *bona fide* third party, if the registration of the acquisition is prior to the registration of the action of nullity or annulment or to the registration of the agreement between the parties, regarding the invalidity of the business.

2. However, the rights of third parties are not recognized if the action is filed and registered within three years after the completion of the business.

3. It is assumed in good-faith the third party purchaser who was unaware, without guilt, on the moment of the acquisition, the vice of the null or annulable business.

#### Art. 292 - Reduction

The nullity or partial annullability does not determine the invalidity of the entire business, unless it is shown that this would not have been completed without the part with vice.

#### Art. 293 - Conversion

The null or annulled business can become a business with different type or content, containing the essential substance and form, when the purpose pursued by the parties is assumed to be wanted by them, if they had foreseen the invalidity.

#### Art. 294 - Businesses executed against the law

Juridical businesses executed against mandatory statutory provisions are null, except in cases where another solution arises from the law.

### **CHAPTER II - Juridical acts**

#### Article 295 - Regulatory provisions

To the juridical acts which do not constitute juridical businesses are applicable, to the extent that the analogy of the situation permits it, the provisions of the preceding chapter.

### **CHAPTER III - Time and its impact on juridical relations**

#### **SECTION I - General Provisions**

##### **Art. 296 - Calculation of time limits**

The rules of Article 279 shall apply in the absence of a specific provision to the contrary, regarding terms and conditions laid down by law, by court or any other authority.

##### **Article 297 - Amendment of time limits**

1. The law which establishes, for any purpose, a shorter period than the one set in a previous law is also applicable to the deadlines that are already underway, but the term starts only from the entry into force of the new law, unless, under the old law, lacks a shorter period to its completion.
2. The law which sets a longer term is also applicable to the deadlines that are already underway, but all time passed from its beginning will be computed.
3. The doctrine of the preceding paragraphs is extensive, at the applicable parts, to the time limits fixed by courts or by any authority.

##### **Article 298 - Prescription, forfeiture and non-use of right**

1. Are subject to prescription, by its non-exercise during the period of time fixed by law, the rights which are not unavailable or which the law does not declare them as exempt from prescription.
2. When, by force of law or by agreement of the parties, a right must be exercised within a certain period, the rules of forfeiture are applicable, unless the law expressly refers to the prescription.
3. The rights of property, usufruct, use and habitation, surface right and easement do not expire, but may be extinguished by its non-use, in cases specified by law, being applicable, in such cases, in the absence of any contrary provision, the rules of forfeiture.

## Article 299 - Amendment of qualification

1. If the law considers as forfeiture a period that the previous law treated as prescriptions, or if, instead, it considers as prescription term what the old law treated as case of forfeiture, the new qualification is also applicable to ongoing deadlines ongoing.
2. However, in the first case, if the prescription is suspended or has been interrupted in the previous legislation, neither the suspension nor the interruption will be attained by the implementation of the new law; in the second case, the period shall be liable to suspension and interruption under general prescription terms.

## **SECTION II - Statute of limitations**

### **SUBSECTION I - GENERAL PROVISIONS**

#### Article 300 – Inderrogability of the regime of statute of limitations

The juridical businesses designed to modify the statutory periods of limitation or to facilitate or impede, otherwise, the conditions under which the limitation operates its effects are null.

#### Art. 301 - Who takes advantage of the statute of limitations

The statute of limitation benefits those who can take advantage of it, without exception of the incapable ones.

#### Art. 302 - Waiver of statute of limitations

1. The waiver of statute of limitation is admitted only after the statute of limitation time period has elapsed.
2. The waiver may be tacit and need not to be accepted by the beneficiary.
3. The ones who are entitled to renounce the statute of limitation are only those who can afford the benefit that the statute of limitation has created.

#### Art. 303 - Invocation of statute of limitation

The court can not suppress *ex officio* the statute of limitations; to be effective, it needs to be invoked, judicially or extrajudicially, for the one that benefits from it, by his/her agent, or, in the case of incapable persons, by the prosecutor.

#### Art. 304 - Effects of Prescription

1. After completion of the statute of limitation, the beneficiary has the right to refuse to comply with the performance or to oppose, in any manner, the exercise of the prescribed right.
2. However, it may not be repeated the performance made spontaneously in fulfillment of any prescribed obligation, even when done with unawareness of the statute of limitation; this regime is applicable to any ways of satisfaction of the prescribed right, as well as to its recognition or to its guarantees.
3. In case of sale with property reservation until payment of the price, if the credit of the price prescribes, the seller may, notwithstanding the statute of limitation, demand the restitution of the thing when the price is not paid.

#### Art. 305 - Enforceability of the statute of limitation by third parties

1. The statute of limitation is invoked by creditors and third parties with a legitimate interest in its declaration, even if the debtor has waived it.
2. However, if the debtor has waived, the statute of limitation can only be invoked by creditors as long as they meet the requirements demanded by *pauliana* impugnation.
3. If, when asking the debtor, he/she does not plead the statute of limitation and is convicted, the *res judicata* does not affect the right that is recognized right to his/her creditors.

#### Art. 306 - Beginning of the process of statute of limitation

1. The period of limitation begins when the right can be exercised; if, however, the beneficiary of the statute of limitation is obliged to comply only after a certain time of the notice, only ended that time does the period of limitation begin.
2. The limitation of rights subject to a suspensive condition or initial term begins only after the condition is met or after the ending of the term.

3. If it is stipulated that the debtor will accomplish when he/she can do it, or the deadline is left to the discretion of the debtor, the limitation period begins to run only after his death.

4. If the debt is illiquid, the limitation begins, as long as it is lawful to the creditor to promote the liquidation; being promoted the liquidation, the limitation of the net result begins, as long as its clearance by agreement or *res judicata* is made.

#### Art. 307 - Periodic installments

In case of a perpetual or lifetime income or other similar periodic installments, the statute of limitation of the unitary right of the creditor goes from the demanding of the first installment which is not paid.

#### Art. 308 - Transmission

1. Once started, the statute of limitation continues to run, even though the right passes to a new owner.

2. If the debt is assumed by a third party, the statute of limitation continues to run on his/her benefit, unless the assumption imports interrupt recognition of the limitation period.

### **Subsection II - Deadlines of the statute of limitation**

#### Art. 309 - Ordinary deadline

The ordinary deadline of the statute of limitations is of twenty years.

#### Art. 310 - Statute of limitations of five years

Limitations after five years:

- a) The annuity of perpetual or lifetime income;
- b) The rents payable by the tenant, even if paid for once;
- c) The forums;
- d) The legal or conventional interest, albeit illiquid, and the dividends of corporations;

e) The share capital amortization payable with interest;

f) The overdue alimony;

g) Any other benefits renewable periodically.

#### Art. 311 - Rights recognized in sentence or enforceable title

1. The right for such statute of limitation which, though only presumptive, the law may provide a shorter period than the ordinary term is subject to the latter, if there is a *res judicata* that recognizes it, or other enforceable title.

2. However, when the sentence or other title refers to instalments not yet due, the statute of limitations remains, in relation to them, of short-term.

### **Subsection III - Presumptive statutes of limitations**

#### Art. 312 - Grounds of presumptive statute of limitations

The statutes of limitations covered by this subsection are founded on the presumption of compliance.

#### Art. 313 - Confession of the debtor

1. The presumption of compliance by the lapse of time can only be rebutted by confession of the original debtor or by whom the debt has been inherited by.

2. The extra-judicial confession is relevant only when made in writing.

#### Art. 314 - Tacit confession

The debt is considered confessed if the debtor refuses to give evidence or to take an oath in court, or practice, in court, actions which are incompatible with the presumption of compliance.

#### Art. 315 - Application of general rules

The obligations which are bond to presumptive limitation are subordinated, in general terms, to the rules of ordinary statute of limitations.

#### Art. 316 - Statute of limitations of six months

Limitations after six months: the credits of accommodation establishments, food or drinks, for the accommodation, food or drinks that they provide, subject to the provisions of paragraph a) of the following Article.

#### Art. 317 - Statute of limitations of two years

Limitations after two years:

- a) The claims of establishments providing lodging, or lodging and meals, to students, as well as the claims of teaching establishments, education, care or treatment, in relation to services provided;
- b) Credits from traders by objects sold to those who are not traders or not intended for their trade, as well as the credits of those which are professionally engaged in an industry, by the supply of goods or products, the execution of works or the management of unrelated businesses, including expenses that may have made, unless the performance is intended to the industrial exercise of the debtor;
- c) Credits for services rendered in the performance of professional services and for the reimbursement of related expenditures.

### **Subsection IV - Suspension of statute of limitations**

#### Art. 318 - Bilateral causes of suspension

The limitation does not occur nor does it start:

- a) Between spouses, even if legally separated from persons and property;
- b) Among those exercising parental custody and the people that are subject to that condition; between the tutor and the tutored or between the administrator and the person that is subject of guardianship;

- c) Among those whose assets are subject, by law or by court or third parties, to the administration of others, and those who exercise the administration, until final accountancy is approved;
- d) Among Legal Entities and their respective directors, regarding their responsibility for exercising their positions, while holding them;
- e) Among those offering domestic work and their boss, while the contract lasts;
- f) While the debtor is the usufructuary of the credit or is entitled to it.

#### Article 319 - Suspension in favor of military and persons attached to military forces

The statute of limitations does not begin against military during service, during wartime or mobilization, within or outside the country, or against people who are, for reasons of service, attached to military forces.

#### Art. 320 - Suspension in favor of minors, interdicted or disabled

1. The limitation does not start running against minors until they have not someone who represents or manages their assets, except if in respect to acts for which the minor has the ability; and, even if the minor has a legal representative or someone who manages his assets, the limitation against him/her is not complete without having passed one year from the end of the incapacity.
2. In the case of presumptive limitations, the statute of limitations is not suspended, but it is not completed without having passed one year from the date on which the minor started acquired a legal representative or administrator of his/her assets or acquired full capacity.
3. The preceding paragraphs shall apply to the interdicted and disabled who do not have the capacity to exercise their rights, with the difference that the incapacity is considered ended, if it has not ceased before, after having passed three years on the deadline that would apply if the suspension were not to be verified.

#### Art. 321 - Suspension due to reason of *force majeure* or willful misconduct of the obliged

1. The statute of limitations shall be suspended during the time that the holder is prevented from asserting his/her right, due to any reason of *force majeure*, during the last three months of the term.

2. If the holder has not exercised his/her right as a result of the willfull misconduct of the required, the provisions of the preceding paragraph apply.

#### Article 322 - Limitation of rights of inheritance or against it

The limitation of rights of inheritance or against it is not complete until six months have passed after the existence of a person by whom or against whom the rights may be invoked.

#### **Subsection V - Interruption of statute of limitations**

##### Art. 323 - Interruption promoted by the holder

1. The period of limitation is interrupted by notification or judicial notification of any act which expresses, directly or indirectly, the intention to exercise the right, whatever the process the act belongs to and even if the court is incompetent.
2. If the notification is not made within five days after being requested, by reason not applicable to the applicant, the limitation is taken as discontinued once the five days elapse.
3. The annulment of the notification does not prevent the interruptive effect of the preceding paragraphs.
4. It is equivalent to the notification, for the purposes of this article, any other judicial means by which the knowledge of the act is made aware to whom the right may be exercised.

##### Art. 324 - Arbitration commitment

1. The arbitration commitment interrupts the limitation regarding which is to become effective.
2. Having a commitment clause or being the arbitration judgment given by law, the statute of limitation is considered interrupted when any of the cases provided for in the preceding article occur.

##### Art. 325 - Recognition

1. The limitation is also interrupted by the recognition of the right, made before the holder against whom the right may be exercised.

2. The tacit recognition is relevant only when resulting from facts which unequivocally express it.

#### Art. 326 - Effects of interruption

1. The interruption disables, for the limitation, all time elapsed before, starting to run a new period from the interrupting action, without prejudice to paragraphs 1 and 3 of the following article.

2. The new limitation is subject to the primary period of limitation, except as provided in Article 311.

#### Art. 327 - Duration of the interruption

1. If the interruption results from the notification or equivalent act, or arbitration, the new limitation period does not begin until *res judicata* the decision which terminates the proceedings.

2. However, when the acquittal or discontinuance of the proceedings is verified, or this is deemed deserted, or the arbitration agreement become void, the new period of limitation starts to run after the interruption act.

3. If, for procedural reasons not attributable to the holder of the right, the defendant is acquitted or if the arbitration agreement rests uneffective, and the limitation period has expired or finishes in the two months immediately following the *res judicata* of the decision or the verification of the fact that makes the commitment ineffective, the limitation is not considered completed before the end of those two months.

### **SECTION III - Forfeiture**

#### Art. 328 - Suspension and interruption

The limitation period is not suspended nor interrupted except in cases determined by law.

#### Art. 329 - Beginning of period

The term of caducity, if the law does not set another date, begins to run from the moment that the right can be lawfully exercised.

#### Art. 330 - Valid stipulations concerning forfeiture

1. The businesses which create special cases of forfeiture are valid, as well as those which modify its legal regime or which renounces it, as long as it is not subtracted to the availability of parties or to the fraud deriving from the legal rules of limitation.
2. The provisions concerning the suspension of the limitation are applicable to the conventional cases of forfeiture, in doubt about the willingness of the parties.

#### Art. 331 - Impeditive causes of forfeiture

1. Only practice prevents the forfeiture, within the legal or conventional period, of the act to which the law or convention confers an impeding effect.
2. However, when the term is fixed by contract or statutory provision relating to an available right, it also prevents forfeiture the recognition of the right by whom against it must be exercised.

#### Art. 332 – Acquittal and interruption of the proceedings and ineffectiveness of arbitration commitment

1. When the forfeiture relates to the right to propose certain action in court and it has been timely proposed, the provisions of paragraph 3 of Article 327 are applicable; but, if the deadline for the forfeiture is less than two months, is replaced by it the designated in this precept.
2. In the cases provided for in the first part of the preceding paragraph, if the instance is interrupted, the period between the proposition of the action and the interruption of the jurisdiction do not account for the purposes of forfeiture.

#### Art. 333 - Official analysis of forfeiture

1. Forfeiture is appreciated by court and may be invoked at any stage of the process, if established on excluded grounds of availability of the parties.

2. If it is established on non-excluded grounds of the availability of the parties, is applicable to forfeiture the provisions of Article 303.

## **CAPTION IV - Exercise and protection of rights**

### **CHAPTER I - General Provisions**

#### Article 334 - Abuse of rights

The exercise of a right is illegitimate when the holder clearly exceeds the limits of good-faith, fair practices or by the social or economic purpose of that right.

#### Art. 335 - Collision of Rights

1. Existing collision of equal rights or of the same kind, must the holders cede, for the necessary extent for all rights to produce its effect, without major detriment to any of the parties.
2. If the rights are unequal or of different kind, prevails the one that should be considered superior.

#### Art. 336 - Direct action

1. It is lawful to resort to force in order to perform or ensure a self right, when direct action is indispensable, due to impossibility to have timely recourse to normal coercive means, to prevent the practical inutilization of that right, as long as the agent does not exceed whatever is necessary to prevent the damage.
2. Direct action may consist in the appropriation, destruction or deterioration of a thing, in the elimination of the resistance irregularly opposed to the exercise of the right, or in another similar act.
3. Direct action is not lawful, when it sacrifices superior interests from those that the agent seeks to achieve or to secure.

#### Art. 337 - Legitimate defense

1. It is considered justified the act intended to remove any actual aggression and contrary to law against the person or the assets of the agent or third party, provided it is not possible to do it by normal means and the damage caused by the act is not clearly superior to the one which can result of the aggression.

2. The act is also deemed to be justified, even if there is an excess of legitimate defense, if the excess is due to disturbance or non-guilty fear of the agent.

#### Art. 338 - Error about the assumptions of direct action or legitimate defense

If the holder of the right acts on the erroneous presumption of the verification of the assumptions which justify direct action or legitimate defense, he/she is obliged to compensate the damage caused, unless the error is excusable.

#### Art. 339 - State of necessity

1. It is lawful the action which destroys or damages something belonging others in order to remove the present danger of a clearly higher damage, either of the agent, or of a third party.

2. The author of the destruction or the damage is, however, obliged to compensate the injured person by damages suffered, if the hazard is caused by his/her exclusive fault; in any other case, the court may set forth a fair compensation and condemn not only the agent, but also those who took advantage of the act or contributed to the state of necessity.

#### Art. 340 - Consent of the injured

1. The injury act affecting the rights of others is lawful, provided that the latter have consented on the injury.

2. The consent of the injured does not exclude, however, the illicitude of the act, when it is contrary to a statutory prohibition or good practices.

3. The injury is deemed consented, when it occurred in the interests of the injured and according to his/her presumed will.